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March 15, 2013

VIA ELECTRONIC AND OVERNIGHT MAIL

Michael Mintzer
Assistant Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency
290 Broadway
New York, NY 10007-1866

**Re: Newtown Creek Superfund Site – Fourth Supplemental Response
to Request for Information Pursuant to 42 U.S.C. § 9604(e)**

Dear Michael:

Enclosed please find the Fifth Supplemental Response ("Response") of Waste Management of New York, LLC ("WMNY") to EPA's October 25, 2011 104(e) Request for Information ("RFI"). The enclosed Response addresses Facility (vi), 222 Morgan Avenue, Brooklyn, New York (Borough of Brooklyn, Block 2942, Lot 1) ("Subject Facility"). Also enclosed is a CD containing documents referenced in the Response, bates numbered NC07293 to NC07525.

Please contact me if you have any questions.

Very truly yours,

Sharon Oras Morgan

Michael Mintzer

March 15, 2013

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bc: Michelle Gale, Esq. (w/encl. via Overnight Mail)
Jay-A Kaplan (w/encl. via Overnight Mail)

Fifth Supplemental Response of Waste Management of New York, LLC to the U.S. Environmental Protection Agency's Request for Information Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675 ("CERCLA"), Pertaining to the Newtown Creek Superfund Site, Kings County and Queens County, New York

Subject to the Objections as noted below¹ and the Objections and Preliminary Statement set forth in its Initial Response ("Initial Response") submitted on January 31, 2012, its First Supplemental Response submitted on April 30, 2012 ("First Supplemental Response"), its Second Supplemental Response submitted on June 29, 2012 ("Second Supplemental Response"), its Third Supplemental Response submitted on September 6 and 10, 2012 ("Third Supplemental Response"), and its Fourth Supplemental Response submitted on December 14, 2012 ("Fourth Supplemental Response"), respectively, which are reiterated and incorporated herein by reference, and without waiving these or other available objections, Waste Management of New York, LLC ("WMNY") submits its fifth supplemental response ("Fifth Supplemental Response" or "Response") to the Section 104(e) Request for Information ("RFI") of the U.S. Environmental Protection Agency ("EPA") pertaining to the Newtown Creek Superfund Site. Pursuant to Instruction No. 5 requesting a separate response for each of the Facilities, this Fifth Supplemental Response is being submitted with respect to Facility (iv), 222 Morgan Avenue, Brooklyn, New York (Borough of Brooklyn, Block 2942, Lot 1) ("Subject Facility").

Nothing in the Initial Response, First Supplemental Response, Second Supplemental Response, Third Supplemental Response, Fourth Supplemental Response or this Fifth Supplemental Response should be construed as an admission or a waiver by WMNY or any other entity of any available rights, defenses, or claims, all of which are expressly reserved herein. Furthermore, WMNY specifically denies any liability pertaining to the "Site" as that term is defined in Definition No. 2, and specifically denies any liability for the actions or alleged actions of any of the entities that owned or operated the Subject Facility at any time.

II. GENERAL OBJECTIONS

WMNY asserts the following general privileges, protections, and objections with respect to the RFI and each information request therein.

1. WMNY asserts all privileges and protections it has in regard to the documents and other information sought by EPA, including the attorney-client privilege, the attorney work-product doctrine, all privileges and protections related to materials generated in anticipation of litigation, the settlement communication protection, and any other privilege or protection available to it under law.

¹ General Objections, as defined below, and specific objections made in response to any RFI shall hereinafter be collectively referred to as "Objections".

2. WMNY asserts that the information being provided herein is confidential business information within the meaning of 40 C.F.R. § 2.203(b), and is therefore subject to the protections set forth in 40 C.F.R. Part 2, Subpart B. WMNY objects to the RFI to the extent it seeks the disclosure of information subject to, and which would be in violation of, confidentiality agreements.

3. WMNY objects to Direction No. 4 as being overbroad, unduly burdensome, and unreasonable. Notwithstanding and without waiving this objection, WMNY has undertaken a diligent and good faith effort to respond fully and accurately to all applicable questions, including but not limited to consulting with individuals most likely to have knowledge of the matter to which the question pertains.

4. WMNY objects to Direction No. 6 as being unduly burdensome and unreasonable. The RFI is lengthy and seeks a significant amount of information pertaining to several parcels. It is neither practical nor reasonable to expect WMNY to identify all sources of information for each question. Further note, EPA lacks the authority to require WMNY to identify information outside of its possession, custody, or control.

5. WMNY objects to Direction No. 8 as being unduly burdensome, overbroad, and unreasonable. The RFI is unduly broad in nature, scope, and timeframe. It is not possible to identify all individuals who are able to provide details or documentation in response to any question. Notwithstanding and without waiving this objection, WMNY is undertaking diligent and good faith effort to obtain all information from current employees and all information within its possession, custody, or control.

6. WMNY objects to Direction No. 9 as being unduly burdensome, overbroad, and unreasonable. It is not possible to determine the unavailability of documents in existence that may be responsive to the RFI, nor is it possible to identify the contents and recipients of such unavailable documents. WMNY disclaims any responsibility to search for, locate, and/or provide copies of any documents known by WMNY to exist, but not within WMNY's possession, custody, or control.

7. WMNY objects to Direction No. 10 to the extent it seeks information that is privileged, work product, or subject to confidentiality agreements or provisions that preclude disclosure of such information.

8. WMNY objects to Direction Nos. 1, 7, and 11 as being unduly burdensome and unreasonable, as well as being confusing, redundant, and/or contradictory. Regardless of whether EPA is requesting WMNY to provide complete, detailed, precise, and/or specific responses, WMNY states it is undertaking a diligent effort in good faith to respond to the RFI in accordance with the applicable statutory provisions.

9. WMNY objects to Direction No. 12 to the extent it seeks information beyond WMNY's possession, custody, or control and to the extent it seeks home addresses.

10. WMNY objects to Direction No. 15 to the extent it is outside the scope of CERCLA and 40 C.F.R. 2.203(b).

11. WMNY objects to the definition of "Site" as being overbroad and undefined, in that the definition does not identify the source areas or areas of release.

12. WMNY objects to the definition of "industrial waste" as being overbroad and unduly vague.

13. WMNY objects to the definition of "Company" as being overbroad, unreasonable and unauthorized to the extent it is directed to entities other than WMNY, and in being vague in failing to define the terms "constituent" and "affiliate."

14. WMNY objects to the definition of "affiliate" or "affiliated" as being overbroad, unduly vague, unreasonable and unauthorized to the extent it is directed to entities other than WMNY, and to the extent such terms are intended to impose liability upon WMNY, which liability is expressly denied.

14. WMNY objects to the definition of "identify" to the extent it encompasses home addresses of natural persons. Subject to this objection, current employees and any other natural persons are identified by name and corporate address. WMNY requests that any contacts with its employees identified in these responses or documents provided be initiated through Sharon Oras Morgan, Esquire of Fox Rothschild LLP.

15. WMNY objects generally to the RFI to the extent it is overbroad and directed to entities other than WMNY, and as being unauthorized by law to the extent it is overbroad, unreasonable, unduly burdensome, and not authorized by the provisions of CERCLA or other applicable authority.

16. The responses set forth below are subject to and in addition of the information contained in documents being produced in response to this RFI. Because the Requests for Information are vague and overbroad to the extent they do not define terms, and are in certain instances conflicting and overlapping, each of the Responses incorporates by reference the Responses to all other Requests for Information as well as information contained in the documents being produced and to be produced by WMNY.

REQUESTS FOR INFORMATION

Section 1.0 Company Information

1. **Company Identification:** *Provide the following information with respect to the Company.*

a. *The full legal, corporate name and mailing address.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overly broad and unduly vague to the extent that it seeks confidential business information. Subject to and without waiving its Objections, the full and correct name of the recipient of the RFI is Waste Management of New York, LLC. Addresses for mailing and service of process are set forth in section (b) below.

- b. *The state and date of incorporation, the date of qualification to do business in the State of New York, and the agents for service of process in the state of incorporation and in New York State.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overly broad and unduly vague and to the extent that it seeks confidential business information. Subject to and without waiving its Objections, WMNY is a Delaware limited liability company incorporated on January 27, 1998, qualified to do business in the State of New York on February 4, 1998. The Registered Agent in Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801. The Registered Agent in New York State is CT Corporation System, 111 Eighth Avenue, New York, NY 10011. The address to which process will be mailed, if accepted, is to the attention of Legal Department, 1001 Fannin Suite 4000, Houston, TX 77002.

- c. *The Chief Executive Officer or other presiding officer of the entity and the mailing address of that officer.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overly broad and unduly vague, and to the extent that it seeks confidential business information. Subject to and without waiving its Objections, WMNY is a Delaware limited liability company incorporated on January 27, 1998, qualified to do business in the State of New York on February 4, 1998. The Registered Agent in Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801. The Registered Agent in New York State is CT Corporation System, 111 Eighth Avenue, New York, NY 10011. The address to which process will be mailed if accepted is to the attention of Legal Department, 1001 Fannin, Suite 4000, Houston, TX 77002.

- d. *If the Company is a successor by merger, acquisition or other activity to any other entity, identify each such entity and describe the nature of the succession. Please provide purchase and sale documents that related to such merger, acquisition or other activity including any indemnities associated with such activity.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of CERCLA, and as seeking confidential business information.

- e. If the Company is a subsidiary, division, branch or affiliate of another corporation or other entity, identify each of those other entities and those entities' Chief Executive Officers or other presiding officers. Identify the state of incorporation and agents for service of process in the state of incorporation and in New York State for each entity identified in your response to this question.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking confidential business information.

- f. Please identify the relationship of the Company to each of the following entities:*

- i. B.Q.E. Services, Inc.;*
- ii. Star Recycling, Inc.;*
- iii. Allied Sanitation, Inc.;*
- iv. Rendering Company of America, Inc. (RENCOA);*
- v. NY Acquisition Sub, Inc.;*
- vi. Waste Management, Inc.;*
- vii. Waste Management National Services, Inc.;*
- viii. Waste Management Disposal Services of New York, Inc.;*
- ix. Waste Management of New York City, Inc.;*
- x. Waste Management of Varick Avenue, Inc.;*
- xi. Waste Management of New York, Inc.;*
- xii. Waste Management of New Jersey, Inc.;*
- xiii. Waste Management, LLC.;*
- xiv. Veolia Es Industrial Services, Inc.; and*
- xv. BFI Waste Services.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking confidential business information. By way of further response, WMNY reserves the right to amend and/or supplement this response as its investigation continues and to the extent relevant and within the scope of 42 U.S.C. § 9604(e).

2. ***Future EPA Communications:*** *If the addressee of this letter requests that future communications from EPA regarding the Site be sent to a particular individual or office, provide the name, address, telephone number, e-mail address and capacity of such individual or office.*

RESPONSE:

Future communications should be sent to counsel for WMNY, whose contact information is as follows:

Sharon Oras Morgan, Esquire
Fox Rothschild, LLP
919 North Market Street, Suite 1300
Wilmington, DE 19899
(302) 622-4246
smorgan@foxrothschild.com

Section 2.0 Owner/Operator Information

3. ***Separately provide a brief summary of the Company's relationship to each Facility (see Definition number 9.a for "Facility") and each Other Newtown Creek Property (see Definition number 9.b for "Other Newtown Creek Property"), including the following. Please see Direction number 5 which requires that the Company respond to the Requests for Information separately for each of the Facilities as though each Facility was the subject of a separate Request for Information.***

- a. ***Nature of the Company's interest in the Facility and each Other Newtown Creek Property;***

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), outside of WMNY's possession, custody or control, and as seeking confidential business information. Subject to and without waiving its Objections, WMNY has never had an interest in the Subject Facility.

- b. ***Corporate identity of any entity affiliated with the Company that holds or held such interest;***

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), outside of WMNY's possession, custody or control, and as

seeking confidential business information. Further, WMNY objects to the term “affiliated” as used and defined in this RFI, and specifically denies any liability associated with any other entity. Subject to and without waiving its Objections, the Subject Facility was transferred by Deed dated September 5, 1997 from Clean Venture, Inc. to Eastern Transfer of New York, Inc. (“ETNY”), a Delaware corporation. ETNY sold the Subject Facility to Waste Services of New York, Inc. by Deed dated December 22, 1999. ETNY subsequently merged into WMNY.

- c. *Address, Borough, Block and Tax Lot Identification and map or schematic locating the Facility and each Other Newtown Creek Property;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), outside of WMNY’s possession, custody or control, and as seeking confidential business information. Subject to and without waiving its Objections, the Subject Facility is known as 222 Morgan Avenue, Borough of Brooklyn, New York, block 2942, lot 1.

- d. *Dates of acquisition and date of disposition of interest and identity of transferor and transferee;*

RESPONSE:

WMNY incorporates herein its Objections and Response to RFI 3 (b) above.

- e. *Dates of operation and date of cessation of operation and identity of lessor, licensor or other person with paramount interest (e.g., property owner, prime leaseholder);*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking confidential business information. Subject to and without waiving its Objections, by way of further answer, WMNY incorporates by reference its Response to RFI 3(f) below.

- f. *The principal business and each other line of business conducted by the Company at the Facility and at each Other Newtown Creek Property; and*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking confidential business information. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility. By way of further answer, WMNY responds that upon information and belief and after reasonable investigation, ETNY operated the Subject Facility as a non-putrescible solid waste transfer station at some point, if at all, between the time of purchase of the Subject Facility and May of 1998.

- g. Provide a copy of all instruments evidencing the acquisition or conveyance of such interest (e.g., deeds, leases, licenses, purchase and sale agreements, partnership agreements, etc.).*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking confidential business information. Subject to and without waiving its Objections, see documents being produced as well as documents filed of record and publicly available on the Automated City Register Information System ("ACRIS").

- 4. Identify all entities who concurrently with the Company exercise or exercised actual control or who held significant authority to control activities at the Facility, including:*

- a. Lessees, sublessees, partners, joint venturers or holders of easements;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information that pre-dates its interest in the Subject Facility and/or information that is outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never controlled or had authority to control activities at the Subject Facility. By way of further answer, WMNY responds that upon information and belief and after reasonable investigation, WMNY is not in the possession of any information indicating that the Subject Property was subject to any joint venture, partnership, lease or sublease during ownership by ETNY. WMNY is unaware of any holders of easements beyond those which would appear of public record.

- b. Contractors, subcontractors, licensees or licensors that exercised control over any materials handling, storage, or disposal activity;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control, as being vague in failing to define the term “exercised control,” “contractor,” “subcontractor,” “licensor” or “licensee”, and as being overly broad and outside the scope of 42 U.S.C. § 9604(e). Subject to and without waiving its Objections, WMNY responds that it never controlled or had authority to control activities at the Subject Facility. By way of further answer, WMNY responds that upon information and belief and after reasonable investigation, WMNY is not in the possession of information responsive to this RFI.

- c. *Pipelines providing delivery of materials to, distribution within or shipment from the Facility;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as seeking information outside its possession, custody, and control, and as being outside the scope of 42 U.S.C. § 9604(e). Subject to and without waiving its Objections, WMNY responds that it never controlled or had authority to control activities at the Subject Facility. By way of further answer, WMNY responds that upon information and belief and after reasonable investigation, WMNY is not in the possession of information responsive to this RFI.

- d. *Railroads or rail lines providing delivery of materials to or shipment from the Facility;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never controlled or had authority to control activities at the Subject Facility. By way of further answer, WMNY responds that upon information and belief and after reasonable investigation, WMNY is not in possession of information responsive to this RFI.

- e. *Truckers providing delivery of materials to or shipment from the Facility;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the

scope of 42 U.S.C. § 9604(e), as seeking information outside its possession, custody, and control, and as being vague to the extent it does not define the term "Truckers." Subject to and without waiving its Objections, WMNY responds that it never controlled or had authority to control activities at the Subject Facility. By way of further answer, WMNY responds that upon information and belief and after reasonable investigation, WMNY is not in possession of information responsive to this RFI.

- f. Barge service companies providing delivery of materials to or shipment from the Facility; and*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never controlled or had authority to control activities at the Subject Facility. By way of further answer, WMNY responds that upon information and belief and after reasonable investigation, WMNY is not in possession of any information indicating that the Subject Facility received delivery of or shipped materials via barge during ETNY's ownership. The extent of available information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

- g. Any other person with activities and/or easements regarding the Facility.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly vague in failing to define "activities," unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking publicly available information and information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never controlled or had authority to control activities at the Subject Facility. By way of further answer, WMNY responds that upon information and belief and after reasonable investigation, WMNY is not in possession of information responsive to this question apart from the information already provided in documents being produced.

- 5. Identify all current or prior owners that you are aware of for the Facility. For each prior owner, further identify if known, and provide copies of any documents you may have regarding:*

- a. the dates of ownership and operations conducted at such times;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking publicly available information and information outside its possession, custody, and control. Subject to and without waiving its Objections, upon information and belief and after reasonable investigation, WMNY incorporates by reference its Response to RFI 3(b) above and incorporates by reference information publicly available in property records, including ACRIS.

- b. any corporate or real estate affiliation between the Company and each such prior owner; and*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as being unduly vague in seeking information about corporate or real estate "affiliation," and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY incorporates by reference its Response to RFI 3(b) above.

- c. release of hazardous substances, industrial waste, other waste including petroleum, at the Facility during the period that the prior owners owned the Facility with such details as you are aware of.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as being unduly vague and as seeking information outside its possession, custody, and control. Subject to and without waiving its objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, WMNY incorporates by reference information set forth in publicly available documents and documents being produced.

- 6. Identify all current or prior operators that you are aware of for the Facility. For each such operator, further identify, if known, and provide copies of any documents you may have regarding:*

- a. the dates of operation;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the

scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY incorporates by reference its Response to RFI 3(b) above.

- b. any corporate or real estate affiliation between the Company and each such prior operator, including, without limitation;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as being unduly vague in seeking information about corporate or real estate "affiliation," and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY incorporates by reference its Response to RFI 3(b) above.

- c. the nature of the operations at such times; and*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control.

- d. release of hazardous substances, industrial waste, other waste including petroleum, at the Facility during the period that the prior operators were operating the Facility.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, WMNY incorporates by reference publicly available documents and documents being produced.

7. Litigation and Administrative Activity:

- a. Has the Company or an affiliate been a party to any litigation, whether as plaintiff or defendant, where an allegation included liability for contamination of or from the Facility, any Other Newtown Creek Property or any other facility within 1,000 feet of Newtown Creek (whether or not owned or operated by the Company)? If yes, identify such litigation and its*

disposition, briefly describe the nature of the Company's involvement in the litigation and provide a copy of the pleadings and any final order.

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as seeking publicly available information and information outside its possession, custody, and control, and as seeking confidential and privileged information. Subject to and without waiving its Objections, upon information and belief WMNY has not been a party to any litigation where an allegation included liability for contamination of or from the Subject Facility.

- b. Has the Company or an affiliate been identified by the U.S. Environmental Protection Agency or by any New York State or New York City agency as a party responsible for environmental contamination with respect to a facility located within 1,000 feet of Newtown Creek? If yes, state the Company's understanding of the basis for such notice of responsibility and provide a copy of any correspondence, orders or agreements between the Company and the governmental agency.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as being unduly vague in requesting information pertaining to "such notice of responsibility," as seeking information which is publicly available, and seeking information outside its possession, custody, and control, and as seeking confidential and privileged information. Subject to and without waiving its Objections, WMNY responds that upon information and belief and after reasonable investigation, it has not been identified as a party responsible for environmental contamination with respect to the Subject Facility. WMNY also incorporates by reference information available in the files of the governmental agencies addressed in this RFI, along with documents being produced.

- 8. Ownership of Newtown Creek: At the present time or at any past time, has the Company or any affiliate:*
- a. Owned any portion of Newtown Creek or wetlands associated with Newtown Creek?*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the

scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it has never owned the Subject Facility. Upon information and belief and after reasonable investigation, the extent of ownership of the Subject Facility by ETNY is set forth in the legal description in the Deed dated September 5, 1997, a copy of which is being produced.

- b. Asserted control or exclusive rights to use any area of Newtown Creek or wetlands associated with Newtown Creek, for any purpose including, without limitation, dredging, filling, construction, maintenance or repair of any facility located in the waters, the associated wetlands or sediments, including, by way of example, bulkheads, rip rap, pipes, wharfs, piers, docking, loading or unloading facilities, cranes or over-water facilities.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that upon information and belief and after reasonable investigation, with respect to the Subject Facility, the answer is no.

- c. If the answer to either subparagraph "a" or "b" of this paragraph is yes, please identify the areas owned or controlled, or over which the company has a right to use, provide an explanation of how and from whom the Company acquired such ownership or control, provide a copy of all title documents, leases, permits or other instruments where such right was derived, and describe all activities conducted pursuant thereto.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY incorporates by reference its Response to RFI 8(a) and (b) above.

9. Operations In, Under or Over the Waters or On the Sediments of Newtown Creek:

- a. Describe all activities at the Facility that were conducted over, on, under, or adjacent to, Newtown Creek. Include in your description whether the activity involved hazardous substances, industrial waste, petroleum or other waste materials and whether any materials were ever discharged, spilled, disposed of, dropped, or otherwise came to be located in Newtown Creek.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY never owned or operated the Subject Facility. By way of further answer, WMNY responds that upon information and belief and after reasonable investigation, during ETNY's ownership, the Subject Facility operated at some point between the time of purchase and May of 1998, if at all, as a solid waste transfer station which accepted only non-hazardous, non-putrescible, construction and demolition waste. WMNY is not in possession of any information indicating that any activities resulted in the release, spillage, or discharge of waste materials or hazardous substances into Newtown Creek. The extent of available information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

- b. Has the Company, or any affiliate, at any time, constructed or operated any facility in or over the waters or on the sediments of Newtown Creek, including any bulkheads, rip-rap, pipes wharfs, piers, docking, loading or unloading facilities, containment booms, cranes or other on-water or over-water facilities.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY never owned or operated the Subject Facility. By way of further answer, WMNY responds that upon information and belief and after reasonable investigation, WMNY is not in possession of any information indicating that ETNY constructed or operated at the Subject Facility any facility in or over the waters or on the sediments of Newtown Creek. The extent of available information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

- c. Has the Company, or any affiliate, at any time constructed, operated or utilized any facility under the waters or sediments of Newtown Creek, including without limitation pipes, pipelines, or other underwater or under sediment facilities.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as being vague in failing to define "other underwater or

under sediment facilities,” and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY never owned or operated the Subject Facility. By way of further answer, WMNY responds that upon information and belief and after reasonable investigation, it is not in possession of any information indicating that ETNY constructed or operated any facility under the waters or sediments of Newtown Creek during its ownership of the Subject Facility. The extent of available information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

- d. If the answer to subparagraph "b" or "c" of this paragraph is yes, please provide details including the facilities constructed or operated, the dates of such construction, replacement or major modification, whether there were discharges into the waters of Newtown Creek associated with construction or maintenance of such facilities, all permits associated with the construction or operation and the nature of the Company's authorization to construct or maintain such facilities in Newtown Creek including from whom the operating rights were obtained, and provide copies of relevant deeds, leases, licenses and permits.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY incorporates by reference its Response to RFI 9(b) and (c).

- e. Provide a summary of over-water activities conducted at the Facility, including but not limited to, any material loading and unloading operations associated with vessels, materials handling and storage practices, ship berthing and anchoring, ship fueling, cleaning, maintenance, or repair.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as being unduly vague in failing to define “over-water activities,” and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY never owned or operated the Subject Facility. By way of further answer, WMNY responds that upon information and belief and after reasonable investigation, it is not in the possession of any information indicating that any over-the-water activities were conducted at the Subject Facility. The extent of available information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

- f. Utilized barges, tankers or other ships in any operations on Newtown Creek and, if so, provide details. With respect to barge, tanker and shipping operations,*
- i. Identify all products and raw materials transferred to or from barges, tanks and ships and the dates of such operations;*
 - ii. Describe the method of transfer to and from barges or other ships during all periods of such activities;*
 - iii. Identify the types of barges or ships utilized and the depth of the water where barges or ships were moored;*
 - iv. Describe barge, tanker or other ship cleaning operations, if any, including the cleaning methods that were used, how cleaning waste was handled; and*
 - v. Describe spill prevention controls that were utilized in delivery or pick-up of materials.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY never owned or operated the Subject Facility. By way of further answer, WMNY responds that upon information and belief and after reasonable investigation, it is not in possession of any information indicating that ETNY utilized tankers, barges, or ships at the Subject Facility.

- g. State whether any of the operations required to be identified above resulted in disposal or spillage of any materials into Newtown Creek or the re-suspension of any sediments of Newtown Creek. If the answer is a "yes" please provide details and documentation of such events.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as being unduly vague in failing to define "materials" or "re-suspension of any sediments," and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it has not identified any operations above.

- 10. Identify each and every Other Newtown Creek Property (see Definition number 9.b for "Other Newtown Creek Property"), that your Company presently or previously owns (or owned), leases (or leased), manages (or managed), operates (or operated), controls (or controlled), or otherwise has or had rights to use, manage or operate, within the area extending one-thousand feet from the shoreline of Newtown Creek (Definition number 1 above defines "Newtown*

Creek" to include all tributaries or branches of Newtown Creek).

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that "Other Newtown Creek Properties" were identified in WMNY's Initial Response and First Supplemental Response.

Section 3.0 Description of the Facility

11. *Provide the following information for the Facility, including a description responsive to each question and depictions by map, drawing, survey or otherwise:*

a. *Address and borough, block and lot;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY will produce representative documents in its possession to the extent responsive, not unduly burdensome, and properly within the scope of this RFI. By way of further response, see Response to RFI 3(c) above.

b. *historic photographs, including without limitation, aerial photographs, photographs showing construction, industrial or commercial processes, sanitary and storm sewer systems, outfalls, indoor and outdoor storage of materials or products, and photographs during construction;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that upon information and belief and after reasonable investigation, it does not have photographs of the Subject Facility in its possession beyond photographs produced in connection with previous Responses.

c. *all surveys and drawings of the Facility in your possession showing current configurations and improvements as well as previous configurations and improvements;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad and unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY will produce representative documents in its possession to the extent responsive, not unduly burdensome, and properly within the scope of this RFI.

- d. sanitary sewer system information, including drawings, sewer easements, surveys or maps showing location and configuration both as currently configured and previous configurations;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY will produce representative documents in its possession to the extent responsive, not unduly burdensome, and properly within the scope of this RFI.

- e. storm water sewer system information, including drawings, surveys or maps showing location and configuration both as currently configured and previous configurations;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY will produce representative documents in its possession to the extent responsive, not unduly burdensome, and properly within the scope of this RFI.

- f. all below-ground structures, including, pipes, pipelines, sumps, wells, dry-wells and other structures for storage or conveyance of solid, gaseous or liquid materials, whether above ground or below ground, and whether owned or operated by you or by another, and as presently configured and as previously configured;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the

scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY will produce representative documents in its possession to the extent responsive, not unduly burdensome, and properly within the scope of this RFI.

- g. *all above-ground structures, including buildings and including all facilities for storage or transport of solid, liquid or gaseous materials, whether owned or operated by you or by another, and as presently configured and as previously configured;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY will produce representative documents in its possession to the extent responsive, not unduly burdensome, and properly within the scope of this RFI.

- h. *all over-water or in-water facilities (e.g., piers, docks, cranes, bulkheads, pipes, treatment facilities, containment booms, etc.),*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, it has no information in its possession indicating that the Subject Facility operated an in-water or over-water facility. The extent of available information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

- i. *all treatment or control devices for all media and pursuant to all environmental laws and regulations (e.g., surface water, air, groundwater, hazardous waste, solid waste, etc.);*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY will produce representative documents in its possession to the extent responsive, not unduly burdensome, and properly within the scope of this RFI.

j. groundwater wells, including drilling logs; and

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, it has no information in its possession indicating that groundwater wells were located on the Subject Facility. The extent of available information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

k. information related to any other outfalls, ditches, direct discharge facilities or other conveyance features and any discharges associated therewith.

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY will produce representative documents in its possession to the extent responsive, not unduly burdensome, and properly within the scope of this RFI.

12. For all items identified in subparagraphs e, f, g, h, i, j, or k, locate each such item on a Facility map or plan, provide the date of installation, identify all permits associated with each item, state whether such items are still in service or, if not, when they were removed from service, identify all leaks or spills, if any, associated with each, and identify any closure of any such item.

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY will produce representative documents in its possession to the extent responsive, not unduly burdensome, and properly within the scope of this RFI.

13. For each permit identify the type of permit, the agency or governmental authority issuing the permit and provide a copy of the permit and any reports required to be generated by the permit.

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information that is publicly available and/or outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY incorporates by reference documents relating to permitting and operation of the Subject Facility, which are being produced, along with any other such documents which are publicly available from all applicable governmental agencies.

14. With Regard to the Placement of Fill at the Facility:

- a. *Was any fill placed on the Facility during the initial development of the Facility by the Company, or at any time thereafter? If so, identify all areas of the Facility where fill was placed, the lateral extent of the fill and the depth of the fill, the purpose of the placement, the source of the fill, the amount of the fill in each area, and the identity of the contractors involved in work related to the fill. State whether the fill has ever been characterized, either before placement or thereafter and, if so, provide a copy of the sampling/characterization results.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Facility. By way of further answer, WMNY responds that upon information and belief and after reasonable investigation, WMNY does not have information in its possession, beyond documents being produced, relating to "initial development" of or placement of fill at the Subject Facility.

- b. *Were any portions of the Facility historically part of Newtown Creek or did the Facility formerly include any marshlands or wetlands associated with Newtown Creek. Please depict any such areas on a survey, drawing or schematic. Please provide your understanding of who filled any such wet areas, the approximate date of such fill, and the lateral extent and depth of such fill, the source of the fill, the composition of the fill and, if any sampling has ever been done of such filled areas, provide a copy of the sampling results.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody,

and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, WMNY does not have information in its possession, beyond documents being produced, indicating whether the Subject Facility was ever "historically" part of Newtown Creek or whether it formerly included any marshlands or wetlands associated with Newtown Creek.

15. *Provide a copy of all reports, information or data you have related to soil, water (ground and surface), or air quality and geology/hydrogeology at and about the Facility. Provide copies of all documents containing such data and information, including both past and current aerial photographs as well as documents containing analysis or interpretation of such data.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY will produce representative documents in its possession to the extent responsive, not unduly burdensome, and properly within the scope of this RFI.

16. *Identify all past and present solid waste management units or areas where materials are or were in the past managed, treated, or disposed (e.g., waste piles, landfills, surface impoundments, waste lagoons, waste ponds or pits, drainage ditches, tanks, drums, container storage areas, etc.) on the Facility. For each such unit or area, provide the following information:*

- a. *a map showing the unit/area's boundaries and the location of all known units/areas whether currently in operation or not. This map should be drawn to scale, if possible, and clearly indicate the location and size of all past and present units/areas;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY will produce representative documents in its possession to the extent responsive, not unduly burdensome, and properly within the scope of this RFI.

- b. *dated aerial photograph of the site showing each unit/area;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that upon information and belief and after reasonable investigation, it does not have photographs of the Subject Facility in its possession beyond photographs produced in connection with previous Responses.

- c. *the type of unit/area (e.g., storage area, landfill, waste pile, etc.), and the dimensions of the unit/area;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of available information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

- d. *the dates that the unit/area was in use;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of available information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

- e. *the purpose and past usage (e.g., storage, spill containment, etc.);*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of available information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

- f. the quantity and types of materials (hazardous substances and any other chemicals) located in each unit/area;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that upon information and belief and after reasonable investigation, WMNY is not in possession of any information indicating that hazardous substances or chemicals were handled or accepted at the Subject Facility.

- g. the construction (materials, composition), volume, size, dates of cleaning, and condition of each unit/area; and*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of available information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

- h. If the unit/area described above is no longer in use, explain how such unit/area was closed and what actions were taken to prevent or address potential or actual releases of waste constituents from the unit/area.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, upon information and belief and after reasonable investigation, WMNY responds that with the exception of information publicly available, it is not in the possession of information regarding the current use of the Subject Facility.

- 17. Provide the following information regarding any current or former sewer or storm sewer lines or combined sanitary/storm sewer lines, drains, or ditches discharging into Newtown Creek from the Facility:*

- a. the location and nature of each sewer line, drain, or ditch;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of its information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

- b. the date of construction of each sewer line, drain, or ditch;***

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of its information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

- c. whether each sewer line, drain, or ditch drained any hazardous substance, waste, material or other process residue to Newtown Creek; and***

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of its information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

- d. provide any documentation regarding but not limited to the following on any and all outfalls to Newtown Creek which are located within the boundaries of the Facility. Your response should include, but not be limited to:***
- i. whether the Facility is serviced by or otherwise drains or discharges to the outfalls and, if so, the source of the outfall;***
 - ii. the identify of upland facilities serviced by the outfalls;***
 - iii. the upland geographic area serviced by the outfalls; and***

- iv. *the type of outfall (i.e., storm water or single or multiple facility outfall).*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of its information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

18. *Provide copies of any storm water or Facility drainage studies, including data from sampling, conducted at these Properties on stormwater, sheet flow, or surface water runoff. Also provide copies of any stormwater pollution prevention, maintenance plans, or spill plans developed for different operations during the Company's operation of the Facility.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

19. *Connections to New York City sewer system:*

- a. *State whether the Facility is connected to the New York City sewer and the date that the Facility was first connected;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of its information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

- b. *State whether the Facility has ever discharged liquid wastes other than through the New York City sewer system and, if so, provide details on such discharges;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as being vague in its reference to "liquid waste", and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of its information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

- c. *State whether the Facility participates in the New York City pretreatment program, whether the Company has ever been classified as a significant industrial user, whether the Company has ever been in violation of sewer use requirements or permits or received any notices of violation relating to use of the New York City sewer system;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome, as being vague in failing to define "pretreatment program," being outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- d. *Provide any information detailing the volume of liquids discharged to the sewers and the nature of the discharges including analytical data detailing the makeup of the discharged liquids;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of its information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

- e. *Provide copies of all permits and permit applications for Industrial Wastewater discharge permits;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of its information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

- f. Provide copies of all notices of violations, correspondence, hearing transcripts and dispositions relating to the Company's use of the New York City sewer system;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that it never owned or operated the Subject Facility.

- g. Copy of Baseline Monitoring Reports submitted to NYC in connection with the Company's application for an industrial wastewater discharge permit;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- h. Copies of all surveys, reports or analyses delineating or characterizing the company's liquid wastes;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as being unduly vague in failing to define "liquid wastes" and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- i. *Copies of all periodic monitoring reports for wastes discharged through the sewer system; and*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as being unduly vague in failing to define "wastes discharged," and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of its information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

- j. *Copies of all invoices from NYC or the NYC Water Board for water and/or wastewater charges including any wastewater allowances.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), to the extent the requested information is publicly available, and as seeking information outside its possession, custody, and control. Subject to and without waiving its objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of its information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

Section 4.0 Company's Operational Activities

20. *Describe the nature of your operations or business activities at the Facility. If the products or processes, operation or business activity changed over time, please identify each separate operation or activity, the dates when each operation or activity was started and, if applicable, ceased. Also, please provide the following:*
- a. *Separately identify and describe the waste management businesses conducted at each of the Facilities;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- b. *In addition to the waste management business, identify each other business activity for which the Facility has been used since its acquisition by the Company, including, without limitation, trucking, barging, truck to barge operations or other waste transfer, vehicle storage, repair, service or maintenance, warehousing, leasing or other;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad and unduly vague, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- c. *Identify each industrial process employed at the Facility and the raw materials used and the wastes generated;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as being vague in failing to define "industrial process," and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that it never owned or operated the Subject Facility.

- d. *Provide a schematic diagram or flow chart that fully describes and/or illustrates the Company's operations, from time to time, on the Facility;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- e. *Provide a schematic diagram that indicates which part of the Company's operations generated each type of waste, including but not limited to wastes generated by cleaning and maintenance of equipment and machinery and wastes resulting from spills of liquid materials;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as being unduly vague in failing to define “waste,” and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- f. Describe all settling tank, septic system, or pretreatment system sludges or other treatment wastes resulting from the Company's operations;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- g. Provide copies of any Material Safety Data Sheets (MSDSs) and Right-to-Know Notices for raw materials used in the Company's operations;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad and unduly vague in failing to define “raw materials”, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- h. Provide copies of MSDSs for each product produced at the Facility; and*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as being unduly vague in failing to define “product,” and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- i. Provide product literature and advertising materials for each Company product or service carried out at each Facility.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

21. *Did the Company store or combust coal at the Facility during the time of its ownership or operation? If your answer is yes, please respond to the following requests for information for all periods of time that the company operated at or owned the Facility:*

- a. *Identify the purposes for such coal storage or combustion, including if used in energy production, the processes in which the energy was used at the Facility;***

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- b. *State the means by which the shipments of coal were delivered to the Facility, whether by barge, rail, truck or other, and identify the shipper and the vendor. Describe how the coal was received at the Facility and transported to storage facilities;***

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- c. *Identify the volume of coal received at the Facility, the type or types of coal (i.e. bituminous, anthracite, etc.) received and consumed on an annual basis during the period of the Company's ownership or operations, including changes over time;***

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- d. *Describe the means of storage of coal at the Facility, including whether the Facility employed coal pockets or other storage areas, the dimensions and volume of such storage facilities, and whether such storage was indoors or outdoors and covered or uncovered. Identify on a Facility map or diagram the location of the coal storage facilities. Describe the means of transport of the coal from the storage facilities to the combustion point;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- e. *Identify how the coal ash was managed including the location and storage facilities for the coal ash and whether it was stored indoors or outdoors, covered or uncovered, the means of conveying the ash to the on-site storage facilities, the location of the storage facilities, and, if sent for disposal, identify the disposal companies. State whether the ash was ever used at the Facility, whether as fill or for any other purpose, or if it was in any other manner disposed of at the Facility and, if so, describe the circumstances and identify the areas of disposal on a Facility map;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- f. *State whether there were Company written manuals providing for coal purchase, storage, maintenance of storage facilities, transport, consumption, or ash management and, if so, provide a copy of such written materials; and*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- g. State whether there were any permits associated with the coal receipt, storage, or consumption or ash management and, if so, provide a copy of such permits.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- 22. Describe the receipt, storage and off shipment of chemicals, raw materials, intermediary product, and final product (including, without limitation petroleum) at the Facility. For each question, identify the time period covered by your response. Please provide a copy of Company manuals that over time were in effect describing these procedures.*

- a. For receipt of materials, please identify:*
- i. all such materials (including, without limitation, petroleum) received, stored at or shipped from the Facility;*
 - ii. its method of shipment to the facility (e.g., pipeline, barge, rail, tanker, truck, or other);*
 - iii. testing, if any, upon receipt of such material, for quality, for conformity to specification, for contamination or otherwise; and*
 - iv. treatment, if any, at the Facility of any material shipped to the facility, prior to storage in tanks at the facility.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as being unduly vague in failing to define “product” or “materials,” and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- b. *For metals and metal compounds (including but not limited to raw materials, scrap, byproducts, ash, wastewater and wastes containing metals or metal compounds but not including metals as components of structures or equipment): Identify any metals and metal compounds previously or currently used or otherwise present at the Facility; the purpose for each of them; any testing done on such materials; and the method and location of use, storage and other handling of such materials at the Facility. Identify all spills, emissions, discharges and releases of any such substances at or from the Facility since the time that your Company owned or operated the Facility. Please provide any MSDSs for each such substance.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as being overbroad and vague in seeking information about "metals" and "metal compounds," and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- c. *For polychlorinated biphenyls ("PCBs"): Identify any PCBs previously or currently used or otherwise present at the Facility, including, but not limited to (i) PCBs in plasticizers, fire retardants, paints, water-proofing, railroad ties, heat stabilizing additives for adhesives, and other materials; (ii) PCBs in capacitors, transformers, vacuum pumps, hydraulic systems, and other devices; and (iii) PCBs in raw materials, wastes, wastewater, scrap, and byproducts. Identify the purpose for each of them; any PCB testing done on such materials; and the method and location of use, storage and other handling of PCBs at the Facility. Identify all spills, emissions, discharges and releases of any PCBs at or from the Facility since the time that your Company has owned the Facility. Please provide any MSDSs for PCBs at the Facility.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- d. *Provide copies of any records, including Company manuals or written procedures that you have in your possession, custody or control relative to the activities described in this Question.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as being vague as to the subject of information sought, and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- 23. *Describe the years of use, purpose, quantity, and duration of any application of pesticides or herbicides on the Facility. Provide the brand name of all pesticides or herbicides used.***

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as being overbroad and vague in its reference to the terms "application," "pesticides," and "herbicides," and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of its information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

- 24. *For all periods of the Company's ownership or operation of the Facility, describe how wastes transported off the Facility for disposal or treatment were handled, stored, and/or treated prior to transport to the disposal facility.***

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds it never owned or operated the Subject Facility.

- 25. *Describe the cleaning and maintenance of the equipment and machinery involved in these operations, including but not limited to:***

- a. *the types of materials used to clean/maintain this equipment/machinery;***

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody,

and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

b. the monthly or annual quantity of each such material used;

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

c. the types of materials spilled in the Company's operations;

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

d. the materials used to clean up those spills;

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

e. the methods used to clean up those spills;

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

f. where the materials used to clean up those spills were disposed of;

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- g. provide copies of Company manuals or procedures relating to cleaning of equipment and machinery and the Facility; and*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- h. provide copies of all records of such cleaning and maintenance including internal records and records from any outside vendor for such services.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- 26. Describe all wastes disposed by the Company into drains at the Facility, including but not limited to:*

- a. the nature and chemical composition of each type of waste;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- b. the approximate quantity of those wastes disposed by month and year;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- c. the location to which these wastes drained (e.g. septic system or storage tank at the Facility, oil-water separator, pre- treatment plant, New York City sewer system); and*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds it never owned or operated the Subject Facility.

- d. whether and what pretreatment was provided.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections and subject to information otherwise provided in its Response and documents being produced. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

- 27. Identify all oil/water separators at the Facility during the Company's ownership or operation including dates of installation, dates of replacement or major modification, purpose of installation and source of influent, location of discharge. Provide a copy of each permit and permit application, influent and effluent sampling results and copies of all submissions to federal, state, city or county environmental agencies or public health agencies relating to oil/water separators.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information that is publicly available and/or outside its possession, custody, and control. Subject to and without waiving its Objections,

WMNY responds that it never owned or operated the Subject Facility.

28. *Identify each fixed above-ground storage tank and each fixed below-ground storage tank that is or was situated on the Facility during the Company's ownership or operation. For each tank, identify the date of installation, the dates and nature of major modifications, the dates and nature of spill detection equipment, the dates and nature of cathodic protection equipment, and description or drawings of tanks, identity of contents that have been stored in the tank both before (if known) or during the Company's ownership or operation, and the practices of cleaning at the time of any change in items stored, and the manner of ultimate disposal of wastes from the tank. Identify procedures for addressing spills from the tanks and identify all spills that have occurred during the Company's ownership of the Facility. Provide a copy of all permits relating to the tank and provide a copy of all Company written manuals or procedures, including manuals that have been superseded by newer manuals or procedures, addressing use and maintenance of such tanks.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

29. *Identify each pipeline serving the Facility that is or was situated on the Facility property (either above- or below- ground) during the Company's ownership or operation. For each pipeline, identify the owner and the operator for the pipeline and the owner or operator of the pipeline to which such segment is connected, and provide a copy of all permits relating to the pipeline on the Facility, the date of installation, all materials transported to the Facility through the pipeline, including crude petroleum or petroleum products, additives, other refining materials, batch separators, natural gas, manufactured gas, other fuel sources, chemicals and/or other materials. Describe pipeline cleaning processes and procedures for handling and disposal of wastes in the pipelines including mixed batches of materials in the pipeline. Identify procedures for addressing spills from the pipelines and identify all spills that have occurred during the Company's ownership of the Facility. Please provide a copy of all Company written manuals or procedures, including manuals that have been superseded by newer manuals or procedures, which address or regulated use and maintenance of such pipelines.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

Section 5.0 Regulatory Information

30. *Identify each federal, state and local authority that regulate or regulated environmental concerns relating to the ownership or operation at the Facility, the activity regulated, and the applicable federal, state and local statute or regulation from which such regulation was derived.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being vague, overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as calling for conclusions of law, and as seeking publicly available information and information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of its information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

31. *Describe all occurrences associated with violations, citations, deficiencies, and/or accidents concerning the Facility related to environmental concerns. Provide copies of all documents associated with each occurrence described.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being vague, overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as being unduly vague in failing to define "occurrences," and as seeking publicly available information and information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of its information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

32. *Provide a list of all local, state, and federal environmental permits which have been applied for or issued to the Company with respect to the Facility for any media, e.g., water (including SPDES and NPDES, NYC sewer permit, Industrial Pretreatment Program permit or any other wastewater discharge related governmental authorization or notice), excavation and fill in navigable*

waters, dredging, tidal wetlands, air, solid waste or hazardous waste, bulk storage, industrial wastewater, etc. under any environmental statute or regulation. Provide a copy of each federal and state permit, the applications for each permit.

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information that is publicly available and/or outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

33. *Has the Company or any affiliate, contractor, or agent associated with the Company or an affiliate, or any individual associated with any of the foregoing ever been accused of any criminal violation in connection with any operation at the Facility. If so, describe the disposition of such accusation and provide details on such accusation.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds it never owned or operated the Subject Facility. By way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of its information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

34. *Was a Notification of Hazardous Waste Activity ever filed with EPA or New York State for any activity at the Facility during the period that the Company or any affiliate owned or operated at the Facility. If so, provide a copy of such notification and the response given by EPA or New York State including the RCRA identification number assigned.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility. By way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of its information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

35. *Did the Company or any affiliate ever have "interim status" under RCRA at the Facility? If so, and the Facility does not currently have interim status; describe the circumstances under which the Facility lost interim status.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility. By way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of its information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

36. *Identify all state or city offices to which the Company has sent or filed hazardous substance or hazardous waste information. State the years during which such information was sent/filed.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as being unduly vague and overbroad in its request for "information," and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, it never filed or sent hazardous substance or hazardous waste information to any office regarding the Subject Facility.

37. *Has the Company or the Company's contractors, lessees, tenants, or agents ever contacted, provided notice to, or made a report to the New York State Department of Environmental Conservation or New York City Department of Environmental Protection or any other state or city agency concerning an incident, accident, spill, release, or other event involving the Facility or involving Newtown Creek? If so, describe each incident, accident, spill, release, or other event and provide copies of all communications between the Company or its agents and NYSDEC, NYCDEP, NYSDOH, NYCDOH or any other state or city agency.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody,

and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds upon information and belief and after reasonable investigation, WMNY never contacted, provided notice to, or made a report to any agency concerning the Subject Facility.

Section 6.0 Facility Releases, Investigations and Remediation

38. *Identify all leaks, spills, or releases into the environment of any waste, including hazardous substances, pollutants or contaminants, industrial waste or petroleum that have occurred at or from the Facility. In addition, identify and provide copies of any documents regarding:*

a. the date of each releases;

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of its information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

b. how the releases occurred, e.g. when the substances were being stored, delivered by a vendor, transported or transferred (to or from any tanks, drums, barrels, or recovery units), and treated;

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of its information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

c. the identity of the material released and the amount of each released;

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody,

and control. Subject to and without waiving its Objections, WMNY incorporates by reference its Response to RFI 38(a).

d. where such releases occurred;

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY incorporates by reference its Response to RFI 38(a).

e. activities undertaken in response to each such release or threatened release, including the notification of any agencies or governmental units about the release and the remediation and the regulatory disposition concerning such release; and

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY incorporates by reference its Response to RFI 38(a).

f. identify all fires, explosions or other similar events that have occurred at the Facility during the Company's ownership or operation that required response either by a Facility employee or a New York City responder or that was the subject of a subsequent investigation by a New York City agency. Identify the location on a Facility map where each of the events occurred and identify the items that were combusted in whole or part, including, without limitation, hazardous substances, pollutants or contaminants, industrial waste or petroleum. Provide a copy of all reports of the event, whether such reports are the Company's private reports or are public reports in the Company's possession.

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never owned or operated the Subject Facility.

39. *Was there ever a spill, leak, release or discharge of waste, or process residue, including hazardous substances, pollutants, contaminants, industrial waste, or petroleum into any subsurface disposal system or floor drain inside or under a building on the Facility? If the answer to the preceding question is anything but an unqualified "no", provide details of each event and any communication with any federal, state or city regulatory body.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of its information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

40. *Has any contaminated soil ever been excavated or removed from the Facility? Unless the answer to the preceding question is anything besides an unequivocal "no", identify and provide copies of any documents regarding:*

a. *Reason for soil excavation;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of its information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

b. *location of excavation presented on a map or aerial photograph;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY incorporates by reference Response to RFI 40(a).

c. *manner and place of disposal and/or storage of excavated soil;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY incorporates by reference Response to RFI 40(a).

d. dates of soil excavation and amount of soil excavated;

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY incorporates by reference Response to RFI 40(a).

e. all analyses or tests and results of analyses of the soil that was removed from the Facility;

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY incorporates by reference Response to RFI 40(a).

f. all confirmatory analyses or tests and results of analyses of the excavated area after the soil was excavated and removed from the area; and

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY incorporates by reference Response to RFI 40(a).

g. all persons, including contractors, with information about (a) through (f) of this question.

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY incorporates by reference Response to RFI 40(a).

41. Have you treated, pumped, or taken any kind of response action on groundwater under the Facility? Unless the answer to the preceding question is anything besides an unequivocal "no", identify and provide copies of any documents regarding:

a. reason for groundwater action;

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that upon information and belief and after reasonable investigation, the answer is no.

b. whether the groundwater contains or contained hazardous substances, pollutants, contaminants, industrial waste, or petroleum, what the constituents are or were which the groundwater contained, and why the groundwater contained such constituents;

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY incorporates by reference Response to RFI 41(a).

c. all analyses or tests and results of analyses of the groundwater;

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY incorporates by reference Response to RFI 41(a).

- d. if the groundwater action has been completed, describe the basis for ending the groundwater action; and*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY incorporates by reference Response to RFI 41(a).

- e. all persons, including contractors, with information about (a) through (d) of this question.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY incorporates by reference Response to RFI 41(a).

- 42. Was there ever a spill, leak, release or discharge of a hazardous substance, waste, or material into Newtown Creek from any equipment, structure, or activity occurring on, over, or adjacent to the Creek? If the answer to the preceding question is anything but an unequivocal "no", identify and provide copies of any documents regarding:*

- a. the nature of the hazardous substance, waste, or material spilled, leaked, released or discharged;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of its information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

- b. the dates of each such occurrence;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the

scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY incorporates by reference Response to RFI 42(a).

c. the amount and location of such release;

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY incorporates by reference Response to RFI 42(a).

d. whether sheens were created on the Creek by the release; and

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being vague, overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY incorporates by reference Response to RFI 42(a).

e. whether there ever was a need to remove or dredge any solid waste, bulk product, or other material from the Creek as a result of the release? If so, please provide information and description of when such removal/dredging occurred, why, and where the removed/dredged materials were disposed.

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad; unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY incorporates by reference Response to RFI 42(a).

43. Describe the purpose for, the date of initiation and completion, and the results of any investigations of soil, water (ground or surface), sediment, geology, hydrology, or air quality on or about the Facility. Provide copies of all data, reports, and other documents that were generated by the Company or any contractor or consultant, or by a federal or state regulatory agency related to the investigations that are described.

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as being unduly vague in failing to define "investigation," and as seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, by way of further answer, WMNY responds that upon information and belief and after reasonable investigation, the extent of its information regarding the Subject Facility, aside from other information publicly available, is set forth in documents being produced.

- 44. Describe any remediation or response actions that you or your agents or consultants have ever taken or are currently taking at the Facility, either voluntarily or as required by any state, local or federal entity. If not otherwise already provided under this Information Request, provide copies of all enforcement agreements with regulatory agencies pursuant to which such response actions were undertaken as well as all reports of investigations or cleanup activities on the Facility.***

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as being unduly vague in failing to define "investigation," and as being overbroad in seeking information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds, upon information and belief and after reasonable investigation, that it has taken no such actions.

- 45. State whether you are planning to perform any investigations of the soil, water (ground or surface), geology, hydrology, and/or air quality on or about the Facility? If so, identify: the purpose, nature, and scope of such investigations and the dates when you plan to undertake such investigations.***

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as being unduly vague in failing to define "investigation." Subject to and without waiving its Objections, WMNY responds that the answer is no.

- 46. Provide a copy of all environmental investigation reports of the Facility including investigations undertaken at the times of acquisition and transfers of the Facility by the Company.***

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), as being unduly vague in failing to define “investigation” and as seeking business confidential information and information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY responds that it never acquired or transferred the Subject Facility.

Section 7.0 Compliance with this Request and Financial Information

47. Persons and Sources Consulted in Your Response: Identify all persons, other than counsel, that the Company consulted, and all sources that the Company reviewed in responding to this request, including, but not limited to:

- a. *the names of persons consulted, the contact information for such person, and if the person is a current or former employee, the job title and responsibilities for such persons and the dates of employment, and identify which questions the person was consulted about; and***

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad. Subject to and without waiving its Objections, WMNY states that the persons listed below were consulted in responding to the RFI:

Jay A. Kaplan
Waste Management
Manager
Environmental Protection
123 Varick Avenue
Brooklyn, NY 11237

Debra Kopsky
Paralegal – Health, Safety & Environment
Waste Management
720 E. Butterfield Road
Lombard, IL 60148

Deborah Nendick
Senior Manager – Real Estate
Waste Management
720 E. Butterfield Road
Lombard, IL 60148

Molly Escalante, Paralegal
Waste Management
1001 Fannin Street
Houston, TX 77002

Karen L. Osilka, Senior Paralegal
Waste Management – Eastern Group Law Department
100 Brandywine Blvd., 3rd Floor
Newtown, PA 18940

Brendan Sheehan
Waste Management
720 E. Butterfield Road
Lombard, IL 60148

- b. a description and the location of where all sources reviewed are currently located, and the questions to which such sources relate.*

RESPONSE:

WMNY incorporates by reference its General Objections. Subject to and without waiving its Objections, WMNY states that the locations of sources reviewed in preparation of this Response included but are not limited to: 123 Varick Avenue, Brooklyn, NY; 1001 Fannin Street, Houston, TX; 100 Brandywine Blvd, 3rd Floor, Newtown, PA; and 720 E. Butterfield Road, Lombard, IL. WMNY reserves the right to amend and/or supplement this Response as its investigation continues and as additional information becomes available.

- 48. Identify all individuals who currently have and those who have had responsibility for the Company's environmental matters (e.g. responsibility for the disposal, treatment, storage, recycling, or sale of the Company's wastes). Also provide each such individual's job title, duties, dates performing those duties, supervisors for those duties, current position or the date of the individual's resignation, and the nature of the information possessed by such individuals concerning the Company's waste management.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking business confidential information. Subject to and without waiving its Objections, WMNY reserves the right to amend and/or supplement this Response as its investigation continues and as additional information becomes available.

49. **Financial Information:** *Provide a copy of the Company's certified annual financial statements for each of the most recent three years.*

RESPONSE:

WMNY incorporates by reference its General Objections. Subject to and without waiving its Objections, WMNY reserves the right to amend and/or supplement this Response as its investigation continues and as additional information becomes available.

50. **Insurance and Indemnification:**

- a. *Provide a schedule of liability insurance policies that provided coverage for the Company with respect to the Facility. Please list all policies from the Company's initial ownership or initial operation of the Facility to the current date, showing the insured, insurer, broker or agent from whom you procured such insurance (if any), policy number, effective dates of the policy, and liability limits. Provide a copy of the Declaration Page for each such insurance policy. For any insurance policy that the Company no longer has in its possession, provide a copy of relevant records tending to show the existence of such policy;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking business confidential information and information outside its possession, custody, and control.

- b. *Provide a schedule of casualty insurance policies since the time of initial ownership or operation of the Facility, with the same information called for in the previous subparagraph that may provide coverage for cleanup of the Facility;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking business confidential information and information outside its possession, custody, and control.

- c. *Has the Company made claims under any policy in connection with environmental liability or environmental casualty in connection with the Facility? If the Company has ever made such a claim, provide a copy of all notices and correspondence in connection with such claim, and state the disposition of such claim;*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking business confidential information and information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY reserves the right to amend and/or supplement this Response as its investigation continues and as additional information becomes available.

- d. Identify each entity that may have a duty to indemnify the Company for any potential liability in connection with the Facility or the Site, identify the circumstances giving rise to the indemnity, and provide a copy of any document that reflects a requirement to indemnify the Company; and*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking business confidential information and information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY reserves the right to amend and/or supplement this Response as its investigation continues and as additional information becomes available.

- e. Identify each entity that the Company has agreed to indemnify for any potential liability in connection with the Facility or the Site, identify the circumstances giving rise to the indemnity and provide a copy of any document that reflects a requirement to indemnify by the Company.*

RESPONSE:

WMNY incorporates by reference its General Objections. Additionally, WMNY specifically objects to this RFI as being overbroad, unduly burdensome and outside the scope of 42 U.S.C. § 9604(e), and as seeking business confidential information and information outside its possession, custody, and control. Subject to and without waiving its Objections, WMNY reserves the right to amend and/or supplement this Response as its investigation continues and as additional information becomes available.

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----X
In the Matter of the Motion for an Order
Without a Hearing for the Alleged Violations
of the Environmental Conservation Law ("ECL")
Articles 3, 27 and 71 and Title 6 of the
Official Compilation of Codes, Rules, and
Regulations of the State of New York (6 NYCRR") Part 360

by

EASTERN ENVIRONMENTAL SERVICES, INC., AND
EASTERN TRANSFER OF NEW YORK, INC.

Facility: Eastern Transfer of New York, Inc.
222 Morgan Avenue
Brooklyn, NY 11237

(Kings County)

Respondents.
-----X

NOTICE OF
MOTION FOR AN
ORDER WITHOUT
A HEARING

R2-0399-98-03

S I R S:

PLEASE TAKE NOTICE THAT upon the annexed affirmation of Laurie Silberfeld, Esq., sworn to on May 18, 1998, and the exhibits attached thereto, the staff of the New York State Department of Environmental Conservation ("DEC" or "DEC Staff"), hereby move for an Order Without a Hearing ("Order"), pursuant to 6 NYCRR 622.12, against Respondents for violation of Articles 3, 27 and 71 of the Environmental Conservation Law ("ECL"). DEC staff seeks an Order:

1. Declaring that the Respondents violated ECL §27-0707 and 6 NYCRR Part 360 when they constructed a building as a part a solid waste transfer station facility located at 222 Morgan Avenue, Brooklyn, NY, Kings County without the necessary permits;
2. Requiring Respondents to cease and desist from conducting putrescible solid waste transfer station and construction and demolition debris management operations at the Facility unless and until the necessary permits are obtained for such activities;
3. Directing Respondents to remove any and all remaining solid waste materials at the Facility in accordance with Part 360 requirements; and
4. Directing Respondents to notify all customers of the Facility of the Summary Order enjoining the Facility's operations and advising such customers transporters to make alternative transport and/or disposal arrangements until further notice;

EASTERN TRANSFER/R2-0399-98-03/DRAFT SUMMARY ORDER 5.18.98

On the basis of the affidavits submitted herewith, DEC Staff states that there is no material issue of fact and that DEC is entitled to judgment as a matter of law.

WHEREFORE, DEC moves for a Summary Order determining that DEC is entitled to judgment and the relief hereinafter requested as a matter of law and for its prayer of relief requests that:

1. Respondents be directed to immediately cease operating and cease acceptance of materials at the facility;
2. Respondents be directed to cease and desist from further construction of the building and other improvements at the facility unless and until Respondents have been issued all necessary permits;
3. Respondents be directed to submit a plan within Thirty (30) Days of the date of the Summary Order, for DEC Staff review and approval, which identifies the steps that may be necessary, if any, to stabilize the building described above so as to minimize the risk of damage while the Respondents await a determination on their pending permits to construct and operate the facility;
4. Respondents be directed to remove from the facility all remaining scrap metal, construction and demolition debris, solid waste and any other wastes at the facility within 30 days of the service of this Order;
5. Respondents be required to pay a civil penalty pursuant to ECL §71-2703 and the stipulated penalty provisions of the 1990 Order of at least \$115,000 plus \$1,000 for each day that Respondents continue to operate the Facility in violation of ECL §27-0707 and Part 360 beyond the date of this Motion;
6. Respondents be directed to advise their customers and transporters of the Order enjoining operations at the Facility until further notice and post conspicuous notices at the Facility advising of the closure;
7. DEC be granted such other and further relief as may be deemed just and proper.

PLEASE BE ADVISED THAT, pursuant to 6 NYCRR Part 622 and Article 3 of the State Administrative Procedures Act, Respondents must submit a response to the attached Motion for Summary Order within twenty (20) days after receipt of this Notice, in accordance with 6 NYCRR 622.12(c) by delivering or mailing a response to the New York State Department of Environmental Conservation, Office of Hearings, 50 Wolf Road, Albany, New York. Service shall also be made upon the DEC Region 2 Office at 47-40 21st Street, Long Island City, N.Y.

EASTERN TRANSFER/R2-0399-98-03/DRAFT SUMMARY ORDER 5.18.98

11101. Upon receipt of a timely response, an Administrative Law Judge ("ALJ") will review this Notice of Motion for Summary Order, supporting affidavits and exhibits hereto, and Respondents' response, along with any accompanying affidavits, evidence or proofs submitted on Respondents' behalf, and rule on the Motion for Summary Order.

PLEASE BE FURTHER ADVISED THAT, the Motion shall be granted if, upon all the papers and proofs submitted, the claim shall be established sufficiently to warrant the granting of summary judgment under the Civil Practice Law and Rules. Likewise, where the Motion, as here, includes several claims, the Motion may be granted in part if it is found that some but not all such claims or any defense thereto is sufficiently established. Upon determining that the Motion should be granted, in whole or in part, the ALJ shall prepare a Report and submit it to the Commissioner pursuant to 6 NYCRR Part 622.18, whereupon the Commissioner shall make a final determination based upon the record submitted to him, a copy of which will be served upon all parties.

PLEASE BE FURTHER ADVISED THAT the Motion shall be denied as to one or more claims if any party shows the existence of facts sufficient to require a hearing. In that case, the ALJ will, if practicable, ascertain what facts are not in dispute or are uncontraverted and shall make an order specifying such facts. Upon the issuance of such a ruling, the moving and responsive papers will be deemed to be the complaint and answer, respectively, and the Hearing will proceed with respect the such cause(s) of action pursuant to Part 622 requirements.

PLEASE BE FURTHER ADVISED THAT the existence of a triable issue of fact associated with relief not specifically sought pursuant to the Motion, such as the amount of civil penalty which should be imposed, will not bar the granting of a Motion for Summary Order. Rather, the ALJ will convene a hearing to assess the amount of penalties to be recommended to the commissioner.

DATED: Long Island City, N.Y.
May 18, 1998

BY: 
Laurie Silberfeld, Esq.
Regional Attorney
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
Region 2
47-40 21st Street
Long Island City, N.Y. 11101
(718) 482-4965

EASTERN TRANSFER/R2-0399-98-03/DRAFT SUMMARY ORDER 5.18.98

TO: **Counsel for Eastern Environmental Services, Inc. and
Eastern Transfer of New York, Inc.**

Thomas S. West, Esq.
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
One Commerce Plaza
99 Washington Avenue
Albany, New York 12210-2820

-and-

Lawrence Schillinger, Esq.
Schillinger Environmental Associates, LLC
15 Elk Street
PO Box 7275
Albany, NY 12224
(518) 463-3622

**Eastern Environmental Services, Inc. and
Eastern Transfer of New York, Inc.**
222 Morgan Avenue
Brooklyn, NY 11237

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----X
In the Matter of the Motion for Order without Hearing for :
the Alleged Violations of Articles 3, 27 and 71 of :
of the New York State Environmental Conservation Law :
and Part 360 of Title 6 of the Official Compilation of :
Codes, Rules and Regulations of the State of New York, :

by :

EASTERN ENVIRONMENTAL SERVICES, INC., AND :
EASTERN TRANSFER OF NEW YORK, INC. :

Facility: Eastern Transfer of New York, Inc. :
222 Morgan Avenue :
Brooklyn, NY 11237 :

(Kings County) :

Respondents. :
-----X

**AFFIDAVIT
IN SUPPORT OF
MOTION FOR ORDER
WITHOUT HEARING**

**DEC File No.
R2-0399-98-03**

STATE OF NEW YORK)
)ss.:
COUNTY OF QUEENS)

LAURIE SILBERFELD, being duly sworn deposes and states as follows:

1. I am the Regional Attorney for the New York State Department of Environmental Conservation ("DEC") Region 2 office, which has jurisdiction over the five boroughs of the New York City. I have been an attorney with the DEC Region 2 office since 1991 and have been in charge of the Region 2 legal department since November, 1997.

2. I am familiar with the Eastern Transfer of New York, Inc. solid waste transfer station located at 222 Morgan Avenue, Brooklyn, Kings County, New York, which is within Region 2, and is the subject of this administrative proceeding.

3. My responsibilities include providing legal advice to DEC program staff in connection with DEC's regulatory oversight of the Facility's operations. That oversight entails, among other things, evaluating Respondents' compliance with the July 2, 1990 Order on Consent described

EASTERN TRANSFER/R2-0399-98-03/DRAFT SUMMARY ORDER 5.18.98

below and the permit review and evaluation of Respondents' application for a DEC Part 360 permit to construct and operate a solid waste transfer facility at 222 Morgan Avenue (the "Facility").

4. I am fully familiar with the terms and requirements of the 1990 Order, including those pertaining to the extent of the authority to operate granted thereunder. The statements contained herein are upon personal knowledge, my discussions with program staff, or my review of DEC files unless otherwise stated.

5. Respondent, EASTERN ENVIRONMENTAL SERVICES, INC., a Delaware corporation, is in the business of, among other things, conducting a variety of solid waste management activities including the operation of landfills, solid waste and other transfer stations, waste trucking operations, directly and through a series of subsidiaries ("Eastern Environmental").

6. Respondent, EASTERN TRANSFER OF NEW YORK, INC., a wholly owned subsidiary of Eastern Environmental, was incorporated in Delaware on July 11, 1997 ("Eastern Transfer"). That same day Eastern Transfer applied for authority to conduct business in New York.

7. By deed dated September 5, 1997, Eastern Transfer purchased the Facility from Clean Venture Inc. Since then, Respondents have been doing business at 222 Morgan Avenue, Brooklyn and have conducted certain solid waste transfer operations at the Facility as further described below.

8. Upon information and belief, and as acknowledged by Respondents' counsel by letter dated May 15, 1998 (a true and accurate copy is attached as Exh. 1), Respondents are continuing to conduct such operations at the Facility.

9. I make this affidavit in support of Staff's motion for an order without hearing pursuant to 6 NYCRR Part 622.12 for the imposition of statutory and stipulated penalties against Respondents.

REGULATORY AUTHORITY

10. Pursuant to Articles 3, 27, and 71 of the ECL, and Parts 360 and 621 of Title 6 of the New York Codes, Rules, and Regulations ("NYCRR"), DEC regulates the construction and operation of solid waste management facilities, including solid waste transfer stations and construction and demolition debris processing facilities in the State of New York. Such authority includes the issuance of permits to construct and operate solid waste facilities.

11. ECL §27-0707 and 6 NYCRR Part 360-1.7 prohibit the construction, modification, or operation of a solid waste transfer station without first having obtained a permit

EASTERN TRANSFER/R2-0399-98-03/DRAFT SUMMARY ORDER 5.18.98

or other written approval from the DEC. Prior versions of Part 360, dating back to at least the April 1, 1987 revisions, have contained such a requirement.

12. DEC's issuance of permits to solid waste transfer stations is a State agency action subject to the environmental review process required by the State Environmental Quality Review Act ("SEQRA") located in ECL Article 8 and 6 NYCRR Part 617.

13. In addition to DEC's permits, solid waste management facilities are required by New York City Codes to obtain various local permits, including a permit from the New York City Department of Sanitation ("NYCDOS"). NYCDOS's determination to issue a permit to allow the operation of a solid waste facility is also subject to the environmental review process under the City's local regulations implementing SEQRA.

14. Since 1992, DEC and NYCDOS have served as co-lead agencies and conducted joint SEQRA review of transfer station permit applications pursuant to a court ordered stipulation. Pursuant to the terms of that stipulation, DEC is responsible for the in depth review of natural resources concerns while NYC DOS is responsible for the in depth review of the issues of local concern including zoning, air quality, noise, community character, among others. Upon completion by each agency of the initial environmental review, both agencies review the findings of their co-lead agency and, if satisfied with that review, a joint determination of significance is prepared. DEC and NYCDOS then work together on any further SEQRA review that may be necessary.

FACILITY HISTORY

Prior Owners and Dealings with DEC

15. On or before February, 1988, the Facility began operating as an illegal outdoor putrescible solid waste transfer station and construction and demolition processing facility. As noted above, DEC Part 360 regulations then in effect prohibited the construction, operation or modification of such in the absence of a permit to construct and operate (Part 360.2, effective April 1, 1987).

16. By submission initially received in February, 1988, New York Carting, Inc., the then owner and operator of the Facility, applied to DEC for a permit to operate a solid waste management facility pursuant to ECL §27-0707. DEC issued several Notices of Incomplete for the permit application, the last of which was dated June 28, 1988.

17. New York Carting failed to provide a timely response to the incomplete notice and it continued to conduct operations at the Facility without the required DEC Part 360 permit. Consequently, and in response to numerous nuisance complaints about the Facility's operations from adjacent businesses and residences, DEC began an administrative enforcement action

EASTERN TRANSFER/R2-0399-98-03/DRAFT SUMMARY ORDER 5.18.98

against New York Carting, Inc. in October, 1988.

18. DEC's administrative action culminated in the execution of an Order on Consent with New York Carting on August 10, 1989. The 1989 Order authorized New York Carting, Inc. to continue solid waste transfer station operations for six months, which DEC could extend provided Respondent submitted a revised permit application within 60 days of the execution of the order, and complied with the other terms of the order.

19. Subsequent violations at the Facility led to another DEC enforcement action in October, 1989 in which DEC sought civil penalties and closure of the Facility.

20. In response, New York Carting brought a suit seeking to enjoin DEC's administrative enforcement action. The suit was settled pursuant to a Stipulation of Settlement signed by the parties on December 28 and 29, 1989, which gave New York Carting temporary authority under the 1989 Order to conduct putrescible solid waste transfer station and recyclables handling operations at the Facility pending completion and execution of a new order on consent.

21. The new order on consent, executed on July 2, 1990 ("1990 Order"), authorized New York Carting to operate for 120 days on the condition that New York Carting, Inc. filed for and diligently pursued DEC and other necessary permits to operate the Facility, and that it operated in strict accordance with the terms of the Order, Part 360, and ECL requirements. The authority contained in the 1990 Order could be renewed by DEC provided New York Carting timely filed its permit application and complied with notices of incomplete application. A true and accurate copy of the 1990 Order is attached as Exh. 2.

22. The 1990 Order specifically states that it is **not** the equivalent of a permit as that term is used in Part 360. Rather, it provided temporary authorization to operate **contingent upon** Respondents' strict compliance with the terms, conditions and provisions of the Order, Part 360 and the ECL. The authorization provided thereunder **expired automatically** at the end of the stated term unless DEC agreed to renew in writing. The 1990 Order further required Facility operations to cease **if, for any reason**, the temporary authority were to lapse or be revoked. See 1990 Order at Paragraph IV.

23. New York Carting filed its permit application in a timely fashion on September 28, 1990, and the term of the 1990 Order therefore was extended in a series of occasions in 90 to 120 day increments.

24. Between 1990 and 1992, ownership and operation of the facility was transferred from New York Carting, Inc. to Newtown Steel, Inc., then to NY Materials, Inc., then later from NY Materials to Clean Venture, Inc. The authorization to operate pursuant to the terms of the 1990 Order likewise was transferred to each such owner and operator.

25. Each of these prior owners filed amended permit applications and pursued them

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with varying levels of diligence. As of October 14, 1992, Clean Venture had submitted sufficient information to enable DEC to finish its review of the natural resources impacts from the Facility. Accordingly, at that point, pursuant to the co-lead agency, DEC forwarded its portion of the SEQRA evaluation to NYCDOS for use by the City for its portion of the joint SEQRA review.

City Litigation with Prior Owner, Clean Venture

26. In 1995, NYCDOS commenced an administrative action against Clean Venture, the then operator of the Facility, to shut down the Facility for operating an outdoor putrescible transfer station in violation of the New York City Code. In response, Clean Venture, Inc. sued the City and obtained a temporary restraining order that temporarily prevented NYCDOS from closing the transfer station operation.

27. In December, 1996, NYCDOS and Clean Venture, Inc. entered into a settlement of the judicial action. That settlement provided interim and conditional authority to operate, contingent upon a number of factors including the necessity of Clean Venture, Inc. to comply with SEQRA requirements by July 31, 1997. The NYCDOS Order further required Clean Venture to cease its putrescible waste operations if a putrescible processing building was not completed by July 31, 1997.

28. Having failed to complete the necessary environmental review and permit submissions and, in turn, having failed to complete the putrescible processing building, in June, 1997, Clean Venture, Inc. requested an extension from NYCDOS of the July 31, 1997 deadline. By letter dated June 18, 1997, NYCDOS denied the request. Accordingly, Clean Venture, Inc. discontinued its putrescible waste operations on or before July 31, 1997.

Respondents' Acquisition of the Facility and Limited Authorization to Proceed

29. Representatives of Respondents approached DEC and NYCDOS separately in the Summer of 1997 to advise of their interest in acquiring the Facility and its operations.

30. With respect to DEC, in August, 1997, Respondents asked DEC to transfer the 1990 Order for the Facility from Clean Venture, Inc. DEC effectively transferred the obligations and authorizations under the 1990 Order from Clean Venture to Eastern Transfer by letter dated September 3, 1997, which added Eastern Transfer as a Respondent to the 1990 Order. A true and accurate copy is attached as Exh. 3.

31. The transfer of the 1990 Order provided limited authorization to Respondents on an interim basis (i.e., 90 to 120 days increments) on specified terms and conditions, including diligent prosecution of permit application, completion of joint SEQRA review, and compliance with law. For the reasons set forth below, the most recent extension of that authority expired on

EASTERN TRANSFER/R2-0399-98-03/DRAFT SUMMARY ORDER 5.18.98

May 7, 1998 and has not been renewed. A true and accurate copy of the most recent extension letter dated February 10, 1998 is attached hereto as Exh. 4.

32. The 1990 Order did not provide authorization to construct a building at the Facility and DEC has not issued a permit for a building to be constructed at the facility. As noted in Paragraph 22 above, the 1990 Order required strict compliance with Part 360 requirements. Among those requirements is the mandate to obtain DEC written authorization prior to implementing any modifications at an existing solid waste management facility. See Part 360-1.7. Erecting a permanent structure at a solid waste facility such as the putrescible processing building under construction at Respondents' Facility constitutes a modification under Parts 360 and 621 and thereby requires prior written DEC authorization. See Part 360-1.7 and 1.8 and Part 621.

33. On September 5, 1997, NYCDOS executed a Compliance Order with Eastern Transfer which authorized Eastern Transfer to conduct putrescible waste transfer operations, under certain specified terms and conditions. The Compliance Order precluded outdoor putrescible waste operations but permitted Eastern Transfer to conduct limited putrescible waste operations (250 tpy) within an existing vehicle maintenance building, subject to obtaining written authorization from DEC, pending construction of "an approved permanent structure."

34. DEC was never asked for and did not provide such authorization, and Eastern Transfer never used the maintenance building for putrescible waste transfer operations. A true and accurate copy of the Compliance Order is attached as Exh. 5.

35. Following its acquisition of the Facility, Respondents proposed substantial changes to the Facility. Such changes required extensive modifications to the permit application that had been filed by the prior owner, Clean Venture, Inc., and which had been under environmental review by the City since 1992. The changed circumstances and proposed changes in operations triggered the need for a new permit application and environmental review by DEC, thus voiding DEC's earlier 1992 preliminary SEQRA evaluation concerning natural resources.

36. Accordingly, on February 9, 1998, Eastern Transfer submitted a Part 360 application with DEC (DEC Application No. 2-6104-00097/00004). Incomplete notices were sent by DEC on March 2, 1998 and April 24, 1998. Respondents have not yet furnished the information required by those two incomplete notices.

37. In conjunction with its permit applications, Respondents prepared a draft environmental assessment which it submitted to NYCDOS in March, 1998. On or about April 21, 1998, NYCDOS forwarded the draft environmental assessment to DEC, in addition

EASTERN TRANSFER/R2-0399-98-03/DRAFT SUMMARY ORDER 5.18.98

numerous City agencies, for review and comment.¹ DEC and NYCDOS are in the midst of completing their review of the draft environmental assessment submission. Consequently, the environmental review for the pending application is not yet completed.

DEC Part 360 Notices of Violations

38. On February 18, 1998, roughly 10 days following DEC's receipt of Respondents' permit application, DEC staff inspected the Facility and discovered that Respondents had begun constructing the putrescible waste processing building without a permit. The DEC inspector gave verbal notice that the construction activities were not authorized and violated the law. A true and accurate copy of the February 18, 1998 inspection report is attached as Exh. 6.

39. On or about February 23, 1998, the DEC inspector confirmed his verbal notice by certified letter to Respondents. A true and accurate copy of the February 23, 1998 letter is attached as Exh. 7.

40. On or about March 31, 1998, the DEC inspector reinspected the Facility and found that Respondents were continuing to construct the Facility in contravention of law and DEC's prior notice. The DEC inspector issued a Notice of Violation, a true and accurate copy of which is attached as Exh. 8.

41. Each time, DEC staff notified Respondents' site operator that construction of the building required a DEC permit and in the absence of such DEC authorization, Respondents were in continuing violation of ECL Article 27 and 6 NYCRR Part 360.

42. Notwithstanding receipt of the above DEC Notices of Violation, Respondents knowingly disregarded such notices and continued construction of the putrescible processing building at the Facility. Upon information and belief, the rate of such construction was accelerated through overtime to ensure the job was completed expeditiously. See Letter from Brooklyn Borough President Howard Golden to Mayor Guiliani dated April 16, 1998, a true and copy of which is attached hereto as Exh. 9.

43. As a result of Respondents' unauthorized construction of the putrescible processing building at the Facility and their refusal to cease such construction upon receipt of DEC Notices of violation, DEC Staff informed Respondents at meetings held at DEC's Region 2 office on May 8 and 11, that the 1990 Order which expired on May 7, 1998 would not be

¹NYCDOS coordinates with other City agencies, including the New York City Departments of Planning, Environmental Protection, and Transportation, for input on the environmental assessment submissions provided by solid waste transfer station applicants.

EASTERN TRANSFER/R2-0399-98-03/DRAFT SUMMARY ORDER 5.18.98

renewed, and any further solid waste transfer station operations by Respondents at the Facility would be in violation of applicable State law and regulations.

44. Another DEC inspection on May 12, 1998 confirmed that Respondents' were continuing to conduct construction and demolition transfer station operations at the Facility despite the expiration of their authority to do so under the 1990 Order five days earlier and DEC Staff's express notice that such authority would not be renewed. A true and accurate copy of the DEC Inspection Report dated May 12, 1998 is attached hereto as Exh. 10.

45. In addition, written notice that the 1990 Order would not be renewed was given by me to Respondents' counsel by letter dated May 15, 1998. A true and accurate copy is attached hereto as Exh. 11.

46. Pursuant to ECL §71-2703, violation of 6 NYCRR Part 360-1.14[l] subjects the violator to a civil penalty of up to \$5,000 for each violation and an additional penalty of \$1,000 for each day the violation continues, as well as to criminal penalties and injunctive relief.

47. Respondents' construction of the putrescible processing building without the required written DEC authorization is without question a clear and unambiguous violation of Part 360 permitting requirements.

48. Respondents' acknowledged operations at the Facility subsequent to the May 7th expiration of its operation authority is as well a clear and unambiguous violation of Part 360 requirements.

Standards for Issuing an Order Without a Hearing

49. DEC regulations, at 6 NYCRR Part 622.12, provide for the issuance of an Order Without Hearing, also known as a Summary Order, if, upon all the papers and proof submitted, the cause of action shall be established sufficiently to warrant the issuance of summary judgment under the New York State Civil Practice Law and Rules ("CPLR").

50. CPLR 3212(b) states that a motion for summary judgment "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party."

51. The Summary Order provision at 6 NYCRR Part 622.12 is patterned after the Summary Judgment provision in the CPLR and is warranted where, as here, there is no dispute that Respondents operated and continue to operate in clear violation of DEC regulations. In the Matter of the Town of Southold, Commissioner's Decision, September 4, 1991 (1991 WL 208425). Respondent in Town of Southold continued to operate its landfill after the deadline set forth in ECL Article 27-0704, commonly referred to as the Long Island Landfill Law.

Respondent there was found to be, as a matter of law, in violation of Article 27 and was ordered to immediately cease its land-filling operations. Southold, at 2.²

52. Summary judgment is designed to expedite civil cases by eliminating from the calendar any claim that can be properly resolved as a matter of law. When it is determined that there is no genuine issue of fact to be resolved at trial, the case should be summarily decided. Andre v. Pomeray, 35 N.Y. 2d 361, 364, 362 N.Y.S. 2d 131, 133 (1974).

The 1990 Order and DEC's subsequent extensions of that Order do not afford Respondents any protection under Section 401 of the State Administrative Procedures Act.

53. Section 401 of the State Administrative Procedures Act ("SAPA") provides that:

When a licensee has made timely and sufficient application for the **renewal** of a license or a new license with reference to any activity of a continuing nature, the **existing license** does not expire until the application has been finally determined by the agency....

54. SAPA Section 401 simply does not apply here as there is no **renewal** application at issue (Respondents are seeking an initial permit to operate), as such there is no SAPA protected **existing license** authorizing Respondents' current operations. Further, the 1990 Order cannot be considered such a license for, as stated above, the decretal provisions of that order specifically state that it is not a permit but rather only a conditional authorization to operate subject to express terms and conditions, and which DEC reserved the right to revoke or not renew.

55. Even assuming that Respondents' are entitled to SAPA protection, all that means is that they are entitled to be heard prior to any revocation or denial of their DEC authorization, here the extension of the 1990 Order. This Summary Order proceeding adequately provides Respondents that opportunity. Town of Haverstraw, Decision and Order on the Commissioner, 1993 WL 547189 (October 20, 1993)

56. Furthermore, notwithstanding Respondents' assertions to the contrary, there is simply no vested property right in the authorization provided for under the 1990 Order. Respondents' authorization was expressly not a permit and was also specifically conditioned upon strict compliance with the terms of the 1990 Order and Part 360 requirements. Further, it

² In so ordering, the Commissioner noted that while there were fact issues (i.e. environmental impacts of continuing operations, impacts of an immediate closure, economic impacts of closure, etc.) that might be considered in determining appropriate penalties, they did not go to liability or the need to impose injunctive relief. Southold, at 1.

EASTERN TRANSFER/R2-0399-98-03/DRAFT SUMMARY ORDER 5.18.98

was subject to the need to obtain renewal by DEC at least every 120 days. The decision whether to renew was strictly a matter of DEC discretion. As such, there was no entitlement to renewal.

57. Even in cases involving permits --something Respondents' authorization under the 1990 Order clearly did not rise to-- Courts have found that where the permit-issuing agency has discretion as to whether to issue or revoke a permit (expressly the case here), no entitlement to that permit arises.

The fact that a permit could have been denied on non-arbitrary grounds defeats the federal due process claim. Focusing on the authority of the local regulator thereby permits the threshold rejection of some federal due process claims, without awaiting exploration of whether the regulator acted so arbitrarily as to offend substantive due process. RRI Realty Corp. v. Southampton, 870 F. 2d 911, 915 (2d Cir. 1989). *See also*, Board of Regents v. Roth, 408 U.S. 564 (1972).

In such a situation, as here, there is no property interest to which due process considerations apply.

EASTERN TRANSFER/R2-0399-98-03/DRAFT SUMMARY ORDER 5.18.98

* * *

58. For all the reasons set forth above, DEC Staff respectfully request an Order:

- a. Determining that Respondents violated ECL §27-0707 and 6 NYCRR Part 360 when they constructed a building as a part their solid waste transfer station facility located at 222 Morgan Avenue, Brooklyn, NY, Kings County without the necessary permits;
- b. Requiring Respondents to immediately cease and desist from conducting any putrescible or construction and demolition debris transfer station activities at the Facility unless and until the necessary permits are obtained and to post notices at the Facility advising of the closure;
- c. Directing Respondents to remove any and all remaining solid waste materials at the Facility in accordance with Part 360 requirements; and
- d. Directing Respondents to notify all customers of the Facility of the Summary Order enjoining the Facility's operations and advising such customers transporters to make alternative transport and/or disposal arrangements until further notice.

DATED: Long Island City, New York
May 18 , 1998

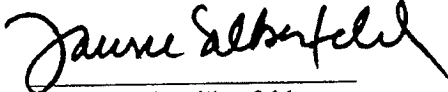

Laurie Silberfeld

Exhibit 1

SENT BY:LEBOEUF LAMB

: 5-15-98 : 16:27 : ALBANY,NEW.YORK-

716 482 1981:# 2/ 3

LEBOEUF, LAMB, GREENE & MACRAE
L.L.P.

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MULTINATIONAL PARTNERSHIP)

May 15, 1998

VIA FACSIMILE

Laurieann Silberfeld, Esq.
Regional Attorney
New York State Department of
Environmental Conservation
Division of Air Resources
Region 2
47-40 21st Street
Long Island City, New York 11101

Re: Eastern Transfer of NY, Inc. - 222 Morgan Avenue,
Brooklyn, New York 11237

Dear Laurieann:

This letter will serve to respond to your letter of today regarding the above-referenced matter.

As we discussed, my recitation of our conversation concerning Mr. Gallay's acknowledgment of the events that occurred in 1997, was my best recollection of what was said. You and I have agreed to a procedure that will obviate any misunderstandings in the future.

Based upon your letter of today, Eastern has no choice but to seek judicial intervention at this time. We will be seeking judicial relief in Albany County Supreme Court on Monday morning. In the meantime, we have documented to you why we believe that Eastern has continuing authority to operate under the provisions of the State Administrative Procedure Act. As such, we do not agree with your conclusion that any further operations violate the Environmental Conservation Law.

NC07309

MAY-15 98 18:30 FROM:NYS DEC REGION 2 7184824026
ENT BY:LEBOELF LAMB : 5-15-98 : 18:27 TO:5164320107

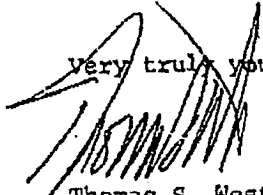
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Laurieann Silberfeld
May 15, 1998
Page 2

In any event, Eastern has indicated that it will abide by whatever the Court decides on Monday regarding operations on Monday and thereafter.

Thank you for your prompt attention to this matter.

Very truly yours,


Thomas S. West

TSW:tsh

cc: Eastern Transfer of NY, Inc.
Lawrence Schillinger, Esq.

443015

NC07310

Exhibit 7

1989
STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----X
In the Matter of the Alleged Violations of
Articles 27 and 71 of the New York State
Environmental Conservation Law (ECL) and
Part 360 of Title 6 of the Official
Compilation of Codes, Rules and Regu-
lations of the State of New York (NYCRR)

ORDER ON
CONSENT

-by-

New York Carting Co., Inc.

DEC FILE NO.
R2-2631-89-01

Respondent.
-----X

WHEREAS:

1. The Department of Environmental Conservation ("DEC") is a Department of the State of New York with jurisdiction to enforce the environmental laws of the State pursuant to §3-0302 of the Environmental Conservation Law ("ECL").

2. Pursuant to Article 27 of the ECL and Parts 360 and 621 of Title 6 of the New York Codes, Rules and Regulations (NYCRR), the DEC is responsible for regulating the construction and operation of solid waste management facilities including, but not limited to, solid waste transfer stations and recyclables handling and recovery facilities in the State of New York and issuing permits for such construction and operation.

3. Respondent New York Carting Co., Inc. ("Respondent" or "New York Carting") is a New York corporation. It operates a solid waste transfer station and recyclables handling and recovery facility at 222 Morgan Avenue, Brooklyn, New York 11211 (the "facility"). Paul Serra is the President of New York Carting.

4. New York Carting and Paul Serra entered into an Order on Consent with the DEC on August 10, 1989 (the "Consent Order"). The Consent Order, DEC File No. R2-2082-88-10, is attached hereto as Attachment 1.

5. New York Carting and Paul Serra entered into an Agreement of the Parties with the DEC on December 29, 1989 (the "Agreement of the Parties"). The Agreement of the Parties is attached hereto as Attachment 2. In the Agreement of the Parties the DEC granted Respondents temporary authority to operate the facility under the terms of the Consent Order. That temporary authority was subsequently extended by the DEC. Most recently it was extended through June 22, 1990. (See Attachment 3).

6. In a Complaint dated October 25, 1989 (the "Complaint"), the DEC alleged that on October 10, 1989 New York Carting and Paul Serra violated the Consent Order. The Notice of Hearing and Complaint is attached hereto as Attachment 4. The Complaint alleges that New York Carting violated the following provisions of the Consent Order: paragraph 7(b) by having over 300 cubic yards of material on the dumping pad at 9:30 p.m.; paragraph 7(c) by having over 300 cubic yards of putrescible material on the site at 9:30 p.m.; paragraph 11 by having piles of material in excess of the 10-foot maximum set out in the Consent Order: one pile of putrescible material 20 feet high and one pile of scrap iron 20 feet high.

7. In an Amended Complaint dated May 24, 1990 (the "Amended Complaint"), the DEC alleged that on May 9, 1990 New

York Carting and Paul Serra violated the Consent Order. The Notice of Hearing and Amended Complaint is attached hereto as Attachment 5. The Amended Complaint alleges that New York Carting violated the following provisions of the Consent Order: paragraph 7(b) by having over 100 cubic yards of material on the dumping pad between 9:00 p.m. and 9:20 p.m.; paragraph 7(c) by having over 100 cubic yards of putrescible material on the site between 9:00 p.m. and 9:20 p.m.

8. Pursuant to ECL §71-2703, violation of an Order on Consent is a violation of the ECL, and subjects the violator to a civil penalty of up to \$2,500 for each violation and an additional penalty of up to \$1,000 for each day that the violation continues, as well as to criminal penalties and injunctive relief.

9. The DEC further alleged in the Complaint that New York Carting and Paul Serra violated 6 NYCRR §360-11.4(c) by not having a sign posted with the hours of operation and the types of solid waste accepted and not accepted at the facility.

10. Pursuant to ECL §71-2703 violation of 6 NYCRR § 360-11.4(c) subjects the violator to a civil penalty of up to \$2,500 for each violation and an additional penalty of \$1,000 for each day the violation continues, as well as to criminal penalties and injunctive relief.

11. New York Carting commenced an Article 78 proceeding in the Supreme Court of the State of New York, County of Queens, Index Number 18780/89, seeking an order of mandamus directing the

DEC to process and issue permits to construct and operate the facility.

12. New York Carting formally denies the allegations stated in paragraphs 6, 7 and 9 above, and the DEC formally denies the allegations in New York Carting's petition referred to in paragraph 11.

13. DEC and New York Carting, recognizing the burden, expense and risks inherent in litigation, hereby agree to discontinue both the administrative enforcement and Supreme Court proceedings on the terms and conditions set forth at paragraphs I through XI below and in the attached Compliance Schedule.

14. DEC and New York Carting consent to the issuance and entry of this second Order on Consent and agree to be bound by the terms, provisions, and conditions contained herein. This Order on Consent (hereinafter referred to as "Order") shall replace the prior Order on Consent entered into on August 10, 1989.

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. New York Carting and its officers, directors, employees, agents, successors, and assignees shall comply with the terms, conditions, and provisions of the attached Compliance Schedule incorporated herein and made a part of this Order. [If the facility or subject property is sold, leased, or otherwise conveyed or transferred, the contract of conveyance shall impose on the transferee the obligation to comply with the terms of this

Order.

II. New York Carting shall pay a civil penalty in the amount of eight thousand five hundred (\$8,500) dollars to DEC simultaneously with its execution of this Order. Of this total, \$5,000 is the unpaid penalty assessed under the August 10, 1989 Order on Consent, and the balance of \$3,500 is an additional penalty for subsequent violations that occurred prior to this Order. In addition New York Carting was closed for one designated by the DEC, which was the twenty-four (24) hour period from 10:00 P.M. on Wednesday, June 13, 1990 until 10:00 P.M. on Thursday, June 14, 1990. The agreement to pay the aforementioned penalties and to close for one day is not an admission of guilt by Respondent.

III. New York Carting and its President, Paul Serra, agree that Paul Serra shall be personally liable to DEC, jointly and severally with New York Carting, for the monetary penalties that are assessed or may be assessed under the terms of this Order, if New York Carting does not pay these penalties to DEC within five (5) days of demand.

IV. This Order is not a permit. This Order constitutes temporary authorization for New York Carting to operate its facility to handle putrescible material and construction and demolition ("C&D") debris for a period of one hundred and twenty (120) days from the effective date of the Order. This temporary authority to operate shall expire automatically at the end of this 120-day period unless DEC agrees in writing to renew it.

DEC shall not renew the temporary authority unless New York Carting submits a permit application, within 90 days of the effective date of this Order, that complies with all of the requirements set forth in Attachment 6. *Pl. J.M. If A Notice of Incomplete*

Application is issued, it shall be in strict compliance with additional information of New York Carting except upon issuance of

6 NYCRR Part 621.5(c).

1) a Notice of Complete Application. Upon receipt of this application, DEC shall expeditiously review it for compliance with 6NYCRR Part 621.5 et seq. This temporary authority to operate is contingent upon New York Carting's strict compliance with the terms, conditions and provisions of this Order, 6NYCRR Part 360 and the ECL. If, for any reason, the temporary authority lapses or is revoked subject to terms and conditions of this Order, New York Carting must cease operating the facility and shall not accept any more solid waste and shall remove all solid waste from the facility in a manner acceptable to DEC.

V. (A) New York Carting's failure to comply with any of the terms, conditions and provisions of this Order shall constitute a violation of this Order and of ECL Article 27. All violations shall be adjudicated administratively as provided for by 6NYCRR Part 622, except violations of paragraphs 15(a), (d) or (e) of the attached Compliance Schedule. The Commissioner may revoke the temporary authority upon a finding of a violation of this Order, such revocation subject to the provisions of 6NYCRR Part 622.

(B) Violations of paragraphs 15(a), (d) or (e) of the Compliance Schedule shall subject New York Carting to the following penalties, without further administrative adjudication:

(a) first violation: facility must be closed

for 2 days designated by the DEC and a \$2,500 penalty;

(b) second violation: facility must be closed for 3 days designated by the DEC and a \$5,000 penalty; and

(c) third violation: facility must be closed and remain closed until the violation is adjudicated.

The facility must be closed and the monetary penalty paid to DEC within twenty-four (24) hours after DEC notifies New York Carting of the violation(s). The notification shall contain an affidavit by a DEC employee describing the violation(s) and the penalty or penalties imposed. Failure to close the facility and/or pay the assessed penalty imposed under (B) above, in the time provided, shall upon notice by the DEC result in the immediate closure of the facility.

VI. All reports and submissions required herein shall be made to Region II, New York State Department of Environmental Conservation, 47-40 21st Street, Long Island City, New York 11101, Attn: Legal Affairs, except that information which is required as part of a permit application shall be directed to the Regional Permit Administrator, Region II.

VII. For the purpose of insuring compliance with this Order, New York Carting shall allow duly authorized representatives of the DEC access to the facility and subject property without prior notice at such times as may be desirable or necessary in order

for DEC to inspect and determine the status of New York Carting's compliance with this Order.

VIII. Nothing in this Order shall relieve New York Carting of the obligation of paying any fees (for permits or otherwise) which may be due the DEC or any other governmental agency.

IX. Respondent shall comply with all applicable Federal, State and Local Laws, Rules and Regulations.

X. Respondent must apply for all other necessary Federal, State and City permits.

XI. The effective date of this Order shall be the date upon which it is signed on behalf of DEC.

DATED: Long Island City, New York
June, 1990

7-2-90

THOMAS C. JORLING, Commissioner
New York State Department of
Environmental Conservation

By: Carol Ash
Carol Ash - Regional Director
Region II

NEW YORK CARTING CO., INC.

By: Paul Serra
Paul Serra, President

PAUL SERRA, Individually

By: Paul Serra
Paul Serra

COMPLIANCE SCHEDULE

In addition to all of the requirements for operation contained in this Order and the provisions of 6 NYCRR Part 360, except as otherwise provided in this Order, Respondent shall immediately adhere to the following conditions for operation:

1. The facility shall not receive, store or handle more than 5,000 cubic yards of putrescible material and no more than 5,000 cubic yards of construction and demolition ("C&D") debris per day. No other solid waste of any kind shall be admitted into the facility. All other solid waste, including but not limited to, industrial waste as defined in 6 NYCRR Part 371, medical waste as defined in 6 NYCRR Part 597, and waste containing asbestos, shall be considered unauthorized waste.

2. All putrescible materials must be removed from the site within 24 hours. This includes material in containers, trucks, or trailers parked on the site.

3. Authorized activities are limited to the receipt, unloading, sorting, materials recovery, compaction, temporary storage, and trans-shipment of putrescible material and C&D debris. All other activities including, but not limited to, disposal, combustion, and composting, are prohibited at the facility.

4. C&D debris that is not recovered for recycling shall be removed from the site within 48 hours.

5. All material transported from the facility shall be

handled lawfully and, insofar as it is disposed, disposed lawfully.

6. Immediately upon discovery of any unauthorized waste at the facility, Respondent shall adequately segregate and secure such unauthorized waste, and notify DEC Region II within one hour of such discovery. Respondent shall remove the unauthorized waste within 24 hours of such discovery, and if, required by State law, shall have this waste removed by a waste transporter permitted to handle such waste pursuant to 6 NYCRR Part 364.

7. Subject to the terms of this Order no material pile at the facility shall exceed a height of 10 feet.

8. Respondent shall erect a fence 10 feet in height within 30 days of the effective date of this Order and shall use this fence to segregate the putrescible materials from all other materials on facility site.

9. Respondent shall not permit any access to the facility unless an attendant is on duty.

10. Respondent shall keep a daily log, listing the materials brought into and taken out of the facility. The log shall indicate, for each type of material, the quantity (in cubic yards), the addresses of origin, the addresses of destinations, and whether the material is to be recycled or disposed of at each destination. Respondent shall submit a monthly log summarizing these daily logs, by the fifth day of the succeeding month, to Mr. Richard Bruzzzone, the Solid Waste Engineer at DEC Region II. Respondent shall maintain its daily logs for three years and

shall make the daily logs available to the DEC immediately upon request.

11. There shall be no open fire at the facility as defined in 6 NYCRR Part 215.

12. The facility shall be operated and maintained so as not to present an eyesore to the community. In this regard, Respondent shall take all practicable measures including, but not limited to, the following: maintaining a fence on the perimeter of the facility of uniform height, color, and opaque material and in good repair; promptly removing, within no more than 24 hours, blowing paper or other solid waste caught on a fence or elsewhere at the site; keeping the street and sidewalk adjacent to the facility free of solid waste, including cleaning this area once every 24 hours if necessary; taking all practicable measures to prevent any vehicles and containers entering and leaving the facility from dripping or spilling any material; and cleaning, painting, repairing, and otherwise maintaining the facility so as to avoid presenting an eyesore.

13. Respondent shall control vectors, dust, and odors so that they do not constitute a nuisance or hazard to public health, safety, welfare, or property. Respondent shall manage the material handled at the facility so as to prevent the uncontrolled movement of material off the site due to wind, rain, or other elements. Respondent shall handle all leachate and runoff from any and all material at the facility in a manner approved by either New York City or the DEC.

14. Respondent shall not use barges in the waters adjacent to the site for the loading or storage of any material. DEC may modify this prohibition, only for the handling of scrap metal, before it issues Respondent a permit to operate. Any such modification will be contingent on a proper showing by Respondent that the methods and materials that will be used will fully protect the waters of Newtown Creek against pollution and filling.

15. Respondent agrees to use all practicable means pursuant to 6 NYCRR Part 360 to mitigate odors from putrescible materials on the site, and to prevent such odors from extending beyond the property line. Respondent shall immediately undertake the following remedial actions:

(a) Putrescible materials shall kept separate from all other kinds of materials on the site at all times;

(b) All processing, tipping, sorting, storage and compaction of putrescible materials shall be done on a concrete or asphalt pad;

(c) Putrescible materials must be kept on the pad or in containers, trucks or trailers on the site;

(d) No putrescible materials of any kind shall be kept on the site, whether on the pad or in containers, trucks, or trailers, between 10:00 a.m. on Saturday and 12:01 a.m. on Monday;

(e) The concrete or asphalt pad shall be completely cleared of all solid waste, between the hours of 9:00 p.m. and

10:00 p.m., Monday through Friday. If any putrescible material removed from the pad prior to 9:00 p.m.. does not fill a 63 cubic yard trailer used to remove such material from the site, that trailer may remain on the site between 9:00 p.m. and 10:00 p.m. No other container, truck or trailer on the site may contain any putrescible waste between 9:00 p.m. and 10:00 p.m., Monday through Friday. All putrescible waste removed from the pad must be transported away from the site for reuse or ultimate disposal;

(f) No putrescible material may remain on the facility site for more than twenty-four (24) hours. In order to insure the continuous removal of putrescible materials from the site, Respondent must:

(i) Have sufficient vehicles waiting on the site facility to remove the putrescible materials; and

(ii) Have sufficient back-up equipment available at the site to replace any machinery used for sorting, compacting or transferring solid waste, if that machinery becomes inoperable;

(g) Any and all activities involving solid waste of any kind which are conducted out-of-doors shall cease no later than 3:00 p.m. on Saturday and shall not resume prior to 12:01 a.m. Monday;

(h) All vehicles transporting material to or from the facility shall be covered in order to prevent spillage and odors. All vehicles transporting or storing putrescible materials must

be pretreated with deodorizing granules (of a kind approved by DEC). All incoming loads of putrescible materials shall be treated with approved deodorizing granules before being deposited on the pad or in storage containers. trucks, or trailers.

16. Respondent shall take all practicable measures to assure that the operation of the facility will not obstruct traffic. To prevent such obstruction, Respondent shall at a minimum take the following measures:

- (a) Vehicles waiting to enter, leave, load, or unload at the facility, or that are in any way associated with the facility, shall not bisect any street, double park, or be cleaned outside the site;
- (b) Containers used to transport, store or otherwise handle solid waste, that are not on or attached to trucks, shall not be placed or parked on any property outside of the facility, including any City streets;
- (c) All trucks entering and leaving the facility shall use only designated truck routes. Respondent shall advise independent truckers of this requirement, in writing, within 5 days after the effective date of this Order.
- (d) No trucks shall wait on the streets adjacent to the site; any truck waiting to load or unload shall wait inside the site.
- (e) No trucks shall idle their engines while waiting

on the site; engines shall run only when a truck is entering, leaving, loading, unloading, or moving about on the site.

17. Respondent shall exterminate vectors weekly, shall maintain records of such extermination, and shall make such records available for inspection by DEC upon demand. All exterminators must be certified by DEC and use only DEC-approved pesticides.

18. Respondent shall provide adequate toilet and sanitary facilities for operating personnel.

CONSENT BY CORPORATE RESPONDENT

Respondent hereby consents to the issuance and entry of the foregoing Order without further notice, waives its right to a hearing herein and agrees to be bound by the provisions hereof.

NEW YORK CARTING CO., INC.

BY:

Paul Serra
Paul Serra

TITLE:

President

DATE:

6/28/90

CORPORATE ACKNOWLEDGEMENT

State of New York: County of New York) ss.:

On this 28 day of June 1990, before me personally came

Paul Serra, to me known, who being duly sworn,

deposed and stated that he resides at 552 Bergen St

, that he is, the

President of New York Carting Co., Inc., the

Corporation described in and which executed the foregoing

instrument, and that he was authorized by said Corporation to

execute the foregoing instrument.

Lawrence B. Goldberg
Notary Public

LAWRENCE B. GOLDBERG
Notary Public, State of New York
No. 31-4735159
Qualified in New York County
Commission Expires 4/1/91

- 1.142

COPY

September 3, 1997

By Telecopy [518] 436-4391

Lawrence R. Schillinger, Esq.
Schillinger Environmental Associates
15 Elk Street
Albany, N.Y. 12207

Re: Consent Order governing 222 Morgan Avenue

Dear Mr. Schillinger:

Per your letter of August 12, 1997: we have reviewed the record of compliance documentation you provided for Eastern Environmental Services, Inc. and its affiliates, including Eastern Transfer of New York, Inc. We also confirmed the represented status of Eastern Waste of New York, Inc. with the New York City Trade Waste Commission.

Subject to the receipt by us of documentation (ie: lease, sale of property or other conveyance) demonstrating that Eastern Transfer of New York actually is authorized by Clean Venture dba New York Materials to take over the transfer facility that is the subject of the referenced consent order, we hereby deem Eastern Transfer added as a respondent to that order. Upon evidence that Clean Venture doing business as New York Materials has vacated the premises in a fashion consistent with its obligations under the consent order, we will deem them released from further responsibilities under that order.

The consent order shall extend until September 30. Please notify this office by September 15 when we can expect the revised application materials promised in your August 12 letter, and the documentation evidencing New York Materials' authorization of Eastern Transfer to take over the transfer station.

Very truly yours,

COPY
Paul Gallax
Regional Attorney

cc: Richard Bruzzone

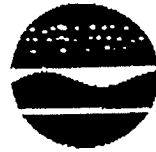
NC07329

Exhibit 11

APR- 2-98 THU 13:11

P.02

New York State Department of Environmental Conservation
Region 2 - Legal Affairs Division
47-40 21st Street
Long Island City, NY 11101-5407
(718) 432-4965 Fax (718) 432-4962



John P. Cahill
Commissioner

February 10, 1998

BY FAX & REGULAR MAIL

Lawrence R. Schillinger, Esq.
Attorney & Counselor at Law
15 Elk Street
Albany, New York 12207

Re: Eastern Transfer of New York, Inc.
R2-2631-89-01

Dear Mr. Schillinger:

Your Order on Consent has expired on February 7, 1998. By letter dated January 30, 1998, you requested renewal of that order. DEC has performed certain inspections and hereby agrees to extend your authority to operate the facility for a period of ninety days.

Therefore, you may operate the facility through May 7, 1998. All the other terms and conditions of the order shall remain in full force and effect.

This extension is without prejudice to any remedies that you may seek due to violations existing as of this date.

Very truly yours,

Laurie Silberfeld
Regional Attorney

cc: Anthony Masters
Rich Bruzzone
Andrew Kreshik
Lori King

NC07331

Exhibit 5

APR-1-98 WED 11:42



sanitation

LESLIE ALLAN
Deputy Commissioner
Bureau of Legal Affairs
125 Worth Street, Room 710
New York, New York 10013
Telephone (212) 788-3963
Fax (212) 791-3824

SOLID WASTE TRANSFER STATION ENFORCEMENT ORDER

WHEREAS:

1. Pursuant to sections 16-130(b) and 16-131 of the Administrative Code of the City of New York (the "Administrative Code"), and Title 16 of the Rules of the City of New York, chapter 4 subchapter A (the "Rules"), the New York City Department of Sanitation (the "Department") has jurisdiction to regulate and permit putrescible and non-putrescible solid waste transfer stations; and
2. Pursuant to section 16-130(b) of the Administrative Code, it is unlawful for any person to operate a solid waste transfer station within the City of New York without first having obtained a permit from the Commissioner of the Department; and
3. Clean Venture, Inc., d/b/a New York Materials Recycling Corp. ("Clean Venture"), operates a putrescible and non-putrescible solid waste transfer station at 222 Morgan Avenue, Brooklyn, New York (the "Facility") by authority of a New York State Supreme Court Stipulation and Order signed by Clean Venture and the Department on December 2, 1996, and a Temporary Permit/Compliance Agreement dated December 23, 1996; and
4. The terms of that Stipulation and Order authorized Clean Venture to maintain at the Facility no more than 2,000 cubic yards of putrescible solid waste for a maximum of 24 hours from receipt, no more than 5,000 cubic yards of construction and demolition debris ("C&D debris") for a maximum of 48 hours from receipt, and no more than 7,500 cubic yards of recognizable uncontaminated road building material for up to 60 days; and
5. The terms of that Stipulation and Order required Clean Venture to pay permit fees of \$47,000, to enclose the putrescible waste operation at the Facility no later than July 31, 1997, and to complete the environmental impact assessment process to the Department's satisfaction no later than July 31, 1997; and
6. Clean Venture has paid the permit fees, but has not enclosed the putrescible waste operation or completed the environmental impact assessment process; and
7. Eastern Transfer of New York, Inc., a wholly owned subsidiary of Eastern Environmental Services, Inc. ("EES"), has agreed to acquire the Facility and to enclose the putrescible waste operation, to complete the environmental impact assessment process, and to redesign the Facility to mitigate its environmental impacts; and
8. EES has submitted to the Department applications for permits to operate a putrescible and non-putrescible solid waste transfer station at the Facility; and

KEEP NYC CLEAN



REDUCE, REUSE, RECYCLE



DON'T LITTER

NC07333

9. The Department has issued Notice of Violation No.E090735527 ("Notice") to Clean Venture for operating an unenclosed putrescible waste operation at the Facility, and EES has agreed to pay a civil penalty of no more than \$10,000 for the violation pursuant to §16-133(a)(2) of the Code; and
10. Clean Venture and EES have acknowledged service of the Notice, and have affirmatively waived their rights to notice and hearing in the manner provided by law, and have consented to the issuance of this Order, and have agreed to be bound by its terms, provisions and conditions.

NOW, THEREFORE, based upon all of the above and pursuant to the authority vested in the Commissioner of the Department by section 16-130(b) of the Administrative Code,

IT IS ORDERED THAT:

- A. Effective on the date it acquires Clean Venture, EES may continue to operate the putrescible and non-putrescible solid waste transfer station at the Facility, *provided that* EES complies with all the terms and conditions of this Order. This authority to operate is temporary pending completion of a background investigation by the Department and the New York City Trade Waste Commission (the "Commission") pursuant to sections 16-131.1 and 16-509 of the Administrative Code. This authority to operate is conditioned on full cooperation by EES in such investigation and compliance with all other terms and conditions set forth herein. If, after completion of the background investigation, the Department finds that EES is not "fit" to operate a transfer station, the Department shall revoke this Order.
- B. Upon the execution of this Order, EES shall submit to the Department a check payable to the Finance Commissioner, City of New York, in the amount of \$10,000, which is the civil penalty provided for in §16-133(a)(2) of the Code. The Department shall hold the check until EES appears before the New York City Environmental Control Board ("ECB") on the return date specified on the Notice. The Department shall deliver the check to the ECB on that date. EES then shall provide the Department with an ECB Clearance Letter verifying payment of all penalties required under this Order.
- C. Upon the execution of this Order, EES shall submit to the Department Clearance Letters from the Department and the ECB verifying that all fines, penalties, and judgments assessed against Clean Venture, EES and its affiliates, PJ's Environmental Corp., and Patsy Serra have been fully paid and satisfied.
- D. Upon the execution of this Order, EES is authorized to accept, process, and transfer putrescible solid waste at the Facility on the following terms and conditions:
 - (1) The New York State Department of Environmental Conservation ("NYSDEC") shall have granted EES written authorization for the putrescible waste operation. A copy of such written authorization shall be provided to the Department.
 - (2) All putrescible solid waste process and transfer operations shall be conducted within an enclosed structure, the plans and design of which are subject to the Department's review and approval.

- (3) Pending the completion of construction of an approved, permanent structure to house the putrescible waste operation at the Facility, EES may use the existing on-site vehicle maintenance building for the putrescible waste operation, subject to the conditions outlined in subparagraph (4) of this paragraph.
- (4) Before it may use the vehicle maintenance building for the putrescible waste operation at the Facility, EES must:
 - clean floor drains and install oil-water separators
 - install odor control devices acceptable to the Department
 - install one or more ventilation fans acceptable to the Department
 - demarcate the tipping floor with yellow paint lines
 - obtain written authorization from NYSDEC to use the maintenance building for a putrescible waste operation
 - obtain from the Department of Buildings appropriate authorization, such as a Certificate of Occupancy, for use of the maintenance building as a transfer station
 - submit a restoration bond in the amount of \$120 per cubic yard of putrescible waste which the Department and the NYSDEC authorize EES to process in the maintenance building
 - submit a site plan showing the location of the maintenance building in relation to the other waste operations at the Facility
 - submit a certified engineer's blueprint of the maintenance building showing the location, capacity, manufacturer, and date of installation of the ventilation equipment
 - submit a certified engineering plan for the control of noise, vibrations, and odor from the putrescible waste operation in the maintenance building
 - submit a list of all of the deodorants that will be used, and the method of application
 - submit proof of a contract with an exterminator to monitor the putrescible waste operation for vectors.
 - submit written confirmation from a permitted putrescible solid waste transfer station that it will receive and process putrescible solid waste from the Facility, if necessary
 - submit a map, certified by a professional engineer, describing not less than one square mile of the area surrounding the transfer station clearly marking the routes where transport vehicles will be transporting solid waste into and out of the Facility, and connecting roadways permitted to be used by the transporting trucks
- (5) The amount of putrescible waste handled in the maintenance building shall be limited to the amount authorized by NYSDEC, but in no event will be more than 250 tons (or 500 cubic yards) per day.
- (6) The tipping area of the maintenance building shall be cleaned, deodorized, and free of all solid waste between 9:00 and 9:30 a.m., Monday through Friday, and between 1:30 and 2:00 p.m. on Saturday.
- (7) When EES has completed construction of the permanent structure to house the putrescible waste operation at the Facility, it may accept and process putrescible waste in an amount authorized in writing by NYSDEC, provided EES shall not store more than 2,000 cubic yards of putrescible waste at the Facility.

- (8) Before commencing the putrescible waste operation in the permanent structure, EES must submit all of the Required Documents listed in Exhibit A, as well as any and all documents or information reasonably required by the Department in connection with the application to operate a putrescible solid waste transfer station at the Facility, and the Department must approve all submissions.
- E. Upon the execution of this Order, EES is authorized to accept, process, and transfer C&D debris at the Facility in an amount authorized in writing by NYSDEC, but not to exceed 5,000 cubic yards per day, provided that EES has submitted to the Department a copy of such written authorization and has submitted a restoration bond in the amount of \$45 per cubic yard of C&D debris which the Department and NYSDEC authorize EES to store at the Facility.
- F. The Facility may operate 24 hours per day, Monday through Saturday.
- G. Within ninety (90) days after the effective date of this Order, EES shall submit to the Department all of the Required Documents listed in Exhibit B, as well as any and all documents or information reasonably required by the Department in connection with the application to operate a non-putrescible solid waste transfer station at the Facility.
- H. Within four (4) months after the effective date of this Order, EES shall submit to the Department all documentation, information, forms, and fees as are then required to complete the environmental impact assessment of the Facility which Clean Venture has begun.
- I. EES shall submit to the Department progress reports on the modification of the Facility, including plans and drawings for the modified site, on the last days of November 1997 and February and May 1998.
- J. This Order is not a permit. However, so long as EES is in substantial compliance with the terms and conditions of this Order, the Department shall not take enforcement action against it solely on the basis of its operation of a transfer station without a permit, provided that its failure to comply fully with the terms of Paragraphs A through I shall entitle the Department to take any enforcement action it deems appropriate, including but not limited to, revocation of this Order and closure of the transfer station without a hearing ten (10) business days after personal notice to EES at the address set forth in Paragraph N below, or fifteen (15) business days after notice by certified mail.
- K. This Order is issued upon the condition that the putrescible and non-putrescible solid waste operations at the Facility comply with all federal, state and local laws, rules and regulations. EES agrees that service of a Notice of Violation upon any employee at the Facility shall constitute valid service for purposes of subjecting EES to the jurisdiction of the Environmental Control Board.
- L. The Department reserves the right to require EES to take any additional measures required to protect human health and the environment, upon reasonable notice and for just cause.
- M. The Department's failure to strictly enforce any provision of this Order shall not operate as a waiver of such provision nor affect the validity of any other provision hereof.

N All notices and correspondence pertaining to this Order shall be served personally or delivered by certified mail as follows

a To the Department

Thomas Miller
Director, Permit and Inspection Unit
New York City Department of Sanitation
137 Centre Street, Room 104
New York, NY 10007

with copies (also by certified mail) to:

Leslie Allen Esq.
Deputy Commissioner of the Bureau of Legal Affairs
New York City Department of Sanitation
125 Worth Street, Room 110
New York, NY 10007

Jody S. Hall
Administrative Services Bureau of Legal Affairs
New York City Department of Sanitation
125 Worth Street, Room 108
New York, NY 10007

s To the Applicant:

Eastern Transfer & Storage, Inc.
220 Morgan Avenue
Brooklyn, New York 11201

with a copy (also by certified mail) to:

Lawrence R. Schmitt Esq.
15 Elk Street
Albany, New York 12207

o The effective date of this Order shall be July 31, 1997. The expiration date of this Order shall be July 31, 1998.

- P. This Order may not be assigned or transferred in whole or in part without the Department's prior written agreement.
- Q. This Order contains the entire agreement of the parties and may not be changed, varied, modified, supplemented or amended except by written instrument signed by both parties

Dated: New York, New York
September 5, 1997

New York City Department of Sanitation

By: Leslie Allen
Deputy Commissioner

Consented and Agreed to by:

Eastern Transfer of New York, Inc.

By: Robert M. Kramer
Robert M. Kramer
Executive Vice President - General Counsel

Exhibit A
REQUIRED DOCUMENTS
Modified Putrescible Waste Facility
Eastern Transfer of New York, Inc.
222 Morgan Avenue
Brooklyn, New York

1. A site plan for the modified site, completed in conformance with §4-13 of the Department's putrescible solid waste transfer station rules.
2. An engineering report for the modified putrescible waste facility, completed in conformance with §4-13 of the Department's putrescible solid waste transfer station rules. The engineering report shall specify areas in such facility for all activities relating to the receipt, tipping, sorting, processing, compaction and storage of solid waste.
3. A Certificate of Occupancy from the NYC Department of Buildings or a Certificate of Completion from the NYC Department of Business Services providing a Use Group 18 Use for the site, including the new putrescible waste facility.
4. A map, certified by a professional engineer, describing not less than one square mile of the area surrounding the putrescible waste facility, clearly marking the routes where transport vehicles will be transporting solid waste into and out of the Facility, and connecting roadways permitted to be used by the transporting trucks.
5. A restoration bond in the amount of \$120 per cubic yard of putrescible waste which the Department and the NYSDEC authorize EES to store at the putrescible waste facility.
6. A certified engineer's blueprint showing the location, capacity, manufacturer, and date of installation of the ventilation equipment.
7. A certified engineering plan for the control of noise, vibrations, and odors from the putrescible waste operation.
8. A list of all of the deodorants that will be used, and the method of application
9. Written confirmation from a permitted putrescible solid waste transfer station that it will receive and process putrescible solid waste from the facility, if necessary.
10. Proof of a contract with an exterminator to monitor the putrescible waste operation for vectors

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Exhibit B
REQUIRED DOCUMENTS
Construction and Demolition Debris Facility
Eastern Transfer of New York, Inc.
222 Morgan Avenue
Brooklyn, New York

1. A site plan completed in conformance with §4-05 of the Department's non-putrescible solid waste transfer station rules.
2. A map, certified by a licensed professional engineer, describing not less than one square mile of the area surrounding the construction and demolition debris facility, clearly marking the routes where transport vehicles will be transporting solid waste into and out of the facility, and connecting roadways permitted to be used by the transporting trucks.
3. A written statement from a licensed professional engineer or registered architect certifying to the nine conditions found in the Department's non-putrescible solid waste transfer station rules.
4. A dust control plan acceptable to the Department.
5. A certified copy of the deed and title insurance for the site.
6. Proof of workers' compensation.

Exhibit 6

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF SOLID & HAZARDOUS MATERIALSSOLID WASTE MANAGEMENT FACILITY INSPECTION REPORT
Continuation Sheet

DISTRIBUTION ROUTING

WHITE COPY	Regional Office
YELLOW COPY	Central Office
PINK COPY	Facility
GREEN COPY	Inspector

FACILITY NAME <i>EASTERN TRANSFER</i>		LOCATION <i>222 Maspeth Ave</i>		FACILITY NO. <i>21467602</i>	DATE <i>11/8/98</i>	TIME <i>5:00</i>
INSPECTOR'S NAME <i>Anthony Masters</i>		CODE <i>S</i>	PERSONS INTERVIEWED AND TITLES <i>LOU D'AMBROSIO - OPERATOR</i>			
REGION <i>2</i>	WEATHER CONDITIONS <i>40°F</i>		DEC PERMIT NUMBER <i>216104-090971</i>			
SHEET <i>2</i> of <i>2</i>	CONTINUATION SHEET ATTACHED <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		PART(S) 360— <i>N/A</i> Attached			

Violations of Part 360 are Subject to Applicable Civil, Administrative, and Criminal Sanctions Set Forth in ECL Article 71.

Additional Violations May be Noted on Sheet One of this Inspection Report.

Provide site sketches, clarification, supplemental information, locations of photographs or samples and/or locations of violations.

[Uncorrected violations must be described in detail and located on a sketch].

1. FACILITY HAS BEGUN CONSTRUCTION OF A PUTRESCIBLE WASTE TRANSFER BUILDING (SIZE APPROX: 200' X 200') THE EXPORT OF CONSTRUCTION IS ONLY THE INSTALLATION OF PILES AND CONCRETE FOOTINGS.
2. INFORMED FACILITY OPERATOR THAT WRITTEN APPROVAL MUST BE GIVEN BY DEC BEFORE CONSTRUCTION MUST BEGIN: THEREFORE, THE FACILITY IS IN VIOLATION OF PART 360 REGS AND ITS CONSENT ORDER TO OPERATE.
FACILITY WAS INFORMED THAT CONTINUING THE CONSTRUCTION WILL BE A VIOLATION.



Inspector's Signature

I hereby acknowledge receipt of the Facility Copy of the Inspection Report sheet.

Individual in Responsible Charge [Please print]

Signature



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF SOLID & HAZARDOUS MATERIALS

6 NYCRR Subpart 360-11

SOLID WASTE MANAGEMENT FACILITY INSPECTION REPORT

[For Use at Transfer Stations]

DISTRIBUTION ROUTING

WHITE COPY Regional Office
YELLOW COPY Central Office
PINK COPY Facility
GREEN COPY Inspector

FACILITY NAME Eastern Transfer		LOCATION 222 Morgan Ave		FACILITY NO. 214617602	DATE 1/18/98	TIME 1500
INSPECTOR'S NAME Anthony Masters		CODE S	PERSONS INTERVIEWED AND TITLES Lou D'Ambrosio - OPERATOR			
REGION 2	WEATHER CONDITIONS 45°F		DEC PERMIT NUMBER 21-16104-10097.1			
SHEET 1 of 2	CONTINUATION SHEET ATTACHED <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No ON BACK		PART(S) 360— N/A		Attached	

Violations of Part 360 are Subject to Applicable Civil, Administrative and Criminal Sanctions Set Forth in ECL Article 71, and as Appropriate, the Clean Water and Air Acts. Additional and/or Multiple Violations May be Described on the Attached Continuation Sheet.

This form is a record of conditions which are observed in the field at the time of inspection
Items marked NI indicate no inspection and do not mean no violation has occurred.

☐ PART 360 PERMIT ☒ ORDER ON CONSENT ☐ REGISTERED ☐ EXEMPT ☐ COMPLAINT

C NI V
☒ ☐ ☐

FACILITY MANAGEMENT

1. Solid waste management facility is authorized and management occurs within approved area. 360-1.7(a)(1),(b); 360-1.8(h)(5)
2. Incoming solid waste is monitored by a control program for unauthorized waste, and solid waste materials accepted are those authorized and approved for management at the facility:
 - a. Control Program. 360-1.14(e)(1)
 - b. Department Approved Facility for Specific Wastes. 360-1.14(n); 360-11.4(a),(m)
 - c. Signs. 360-11.4(c)*
3. Operator maintains and operates facility components and equipment in accordance with the permit and their intended use:
 - a. Maintenance of Facility Components/Site Grading. 360-1.14(f)(1)*
 - b. Adequate Equipment. 360-1.14(f)(2)*
 - c. Drainage. 360-11.4(f)*
4. Operational records are available where required:
 - a. Unauthorized Solid Waste Records. 360-1.14(f)(1)
 - b. Self Inspection Records. 360-1.14(f)(2)
 - c. Permit Application Records. 360-1.14(f)(3)
 - d. Monitoring Records. 360-1.14(f)(4)
 - e. Facility Operator Records. 360-1.14(u)(1)*
 - f. Daily Log of Solid Waste. 360-11.4(l)*

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OPERATION CONTROL

5. Solid waste, including blowing litter, is sufficiently confined or controlled. 360-1.14(j); 360-11.4(e)
6. Dust is effectively controlled, and does not constitute an off-site nuisance. 360-1.14(k)
7. On-site vector populations are prevented or controlled, and vector breeding areas are prevented. 360-1.14(l); 360-11.4(e)
8. Odors are effectively controlled so that they do not constitute a nuisance. 360-1.14(m); 360-11.4(e)

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WATER

9. Solid waste is prevented from entering surface waters and/or groundwaters. 360-1.14(b)(1)
10. Leachate is minimized through drainage control or other means and is prevented from entering surface waters. 360-1.14(b)(2)

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ACCESS

11. Access to the facility is strictly and continuously controlled by fencing, gates, signs, natural barriers or other suitable means. 360-1.14(d)*
12. On-site roads are passable. 360-1.14(n)*

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WASTE HANDLING

13. Adequate storage for incoming solid waste is available. 360-11.4(g)*
14. Putrescible solid waste is removed when transfer containers are full, or within seven days of receipt. 360-11.4(i)*
15. Processing, tipping, sorting, storage, compaction, and related activities are in an enclosed or covered area [for transfer stations receiving more than 50,000 cubic yards or 12,500 tons of solid waste annually]. 360-11.4(n)(1)*
16. Incoming waste is weighed or measured before unloading [for transfer stations receiving more than 50,000 cubic yards or 12,500 tons of solid waste annually]. 360-11.4(n)(2)*
17. Station is cleaned or washed down each day to prevent odors and other nuisance conditions [for transfer stations receiving more than 50,000 cubic yards or 12,500 tons of solid waste annually]. 360-11.4(n)(3)*

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OTHER

On Continuation Sheet identify any other violations.

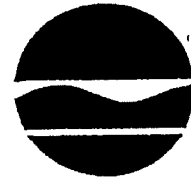
Does Not Apply To A Registered Transfer Station

I hereby acknowledge receipt of the Facility Copy of this Inspection Report sheet.

Individual in Responsible Charge (Please print)

Exhibit 7

New York State Department of Environmental Conservation
Division of Solid and Hazardous Materials, Region 2
47-40 21st Street, Long Island City, NY 11101
Tel: (718) 482-4996 Fax: (718) 482-4979



John P. Cahill
Commissioner

CERTIFIED MAIL

February 23, 1998

Eastern Transfer of NY, Inc.
222 Morgan Avenue
Brooklyn, New York 11237

Re: Eastern Transfer of NY, Inc., 222 Morgan Ave., Brooklyn, NY

Dear Mr. D'Ambrosio,

An inspection was made at your facility (Eastern Transfer of NY, Inc., 222 Morgan Ave) on February 18, 1998 and you have been found to be in violation of your consent order to operate and the NYCRR Part 360 regulations and therefore are subject to all applicable civil, administrative and criminal sanctions set forth in ECL article 71.

The inspection of the facility revealed that construction of a putrescible waste processing building has begun without the written approval or a permit to operate and construct from the DEC. This construction is a violation of the regulations and every day the construction continues, this will be considered an additional violation.

A case will be initiated with our Division of Legal Affairs to address the above violation. If you have any questions, please contact the Division of Solid and Hazardous Materials at (718) 482-4996.

Sincerely,

Anthony Masters
Environmental Engineer 1

cc. Rich Bruzzone
Femi Falade



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF SOLID & HAZARDOUS MATERIALS

6 NYCRR Subpart 360-11

SOLID WASTE MANAGEMENT FACILITY INSPECTION REPORT

[For Use at Transfer Stations]

DISTRIBUTION ROUTING

WHITE COPY	Regional Office
YELLOW COPY	Central Office
PINK COPY	Facility Inspector
GREEN COPY	

FACILITY NAME <u>Eastern Transfer</u>		LOCATION <u>222 Moran Ave</u>	FACILITY NO. <u>24476</u>	DATE <u>03/31/98</u>	TIME <u>10:00</u>
INSPECTOR'S NAME <u>Anthony Masters</u>		CODE <u>S</u>	PERSONS INTERVIEWED AND TITLES <u>Lou D'Ambrasio - OPERATOR</u>		
REGION <u>2</u>	WEATHER CONDITIONS <u>85°F</u>		DEC PERMIT NUMBER <u>2-61194-9009711</u>		
SHEET <u>1 of 2</u>	CONTINUATION SHEET ATTACHED <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	PART(S) 360- <u>N/A</u>		Attached	

Violations of Part 360 are Subject to Applicable Civil, Administrative and Criminal Sanctions Set Forth in ECL Article 71, and as Appropriate, the Clean Water and Air Acts. Additional and/or Multiple Violations May be Described on the Attached Continuation Sheet.

This form is a record of conditions which are observed in the field at the time of inspection
Items marked NI indicate no inspection and do not mean no violation has occurred.

☐ PART 360 PERMIT ☒ ORDER ON CONSENT ☐ REGISTERED ☐ EXEMPT ☐ COMPLAINT

C	NI	V	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	FACILITY MANAGEMENT
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1. Solid waste management facility is authorized and management occurs within approved area. 360-1.7(a)(1),(b); 360-1.8(h)(5)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2. Incoming solid waste is monitored by a control program for unauthorized waste, and solid waste materials accepted are those authorized and approved for management at the facility:
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a. Control Program. 360-1.14(e)(1)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b. Department Approved Facility for Specific Wastes. 360-1.14(f); 360-11.4(a),(m)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c. Signs. 360-11.4(c)*
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3. Operator maintains and operates facility components and equipment in accordance with the permit and their intended use:
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a. Maintenance of Facility Components/Site Grading. 360-1.14(f)(1)*
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b. Adequate Equipment. 360-1.14(f)(2)*
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c. Drainage. 360-11.4(f)*
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	4. Operational records are available where required:
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a. Unauthorized Solid Waste Records. 360-1.14(f)(1)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b. Self Inspection Records. 360-1.14(f)(2)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c. Permit Application Records. 360-1.14(f)(3)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	d. Monitoring Records. 360-1.14(f)(4)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	e. Facility Operator Records. 360-1.14(u)(1)*
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	f. Daily Log of Solid Waste. 360-11.4(i)*
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	OPERATION CONTROL
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	5. Solid waste, including blowing litter, is sufficiently confined or controlled. 360-1.14(j); 360-11.4(e)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	6. Dust is effectively controlled, and does not constitute an off-site nuisance. 360-1.14(k)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	7. On-site vector populations are prevented or controlled, and vector breeding areas are prevented. 360-1.14(l); 360-11.4(e)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	8. Odors are effectively controlled so that they do not constitute a nuisance. 360-1.14(m); 360-11.4(e)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	WATER
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9. Solid waste is prevented from entering surface waters and/or groundwaters. 360-1.14(b)(1)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10. Leachate is minimized through drainage control or other means and is prevented from entering surface waters. 360-1.14(b)(2)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	ACCESS
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11. Access to the facility is strictly and continuously controlled by fencing, gates, signs, natural barriers or other suitable means. 360-1.14(d)*
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	12. On-site roads are passable. 360-1.14(n)*
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	WASTE HANDLING
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13. Adequate storage for incoming solid waste is available. 360-11.4(g)*
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Putrescible solid waste is removed when transfer containers are full, or within seven days of receipt. 360-11.4(i)*
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	15. Processing, tipping, sorting, storage, compaction, and related activities are in an enclosed or covered area [for transfer stations receiving more than 50,000 cubic yards or 12,500 tons of solid waste annually]. 360-11.4(n)(1)*
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16. Incoming waste is weighed or measured before unloading [for transfer stations receiving more than 50,000 cubic yards or 12,500 tons of solid waste annually]. 360-11.4(n)(2)*
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17. Station is cleaned or washed down each day to prevent odors and other nuisance conditions [for transfer stations receiving more than 50,000 cubic yards or 12,500 tons of solid waste annually]. 360-11.4(n)(3)*

OTHER

On Continuation Sheet identify any other violations.

Does Not Apply To A Registered Transfer Station.

I hereby acknowledge receipt of the Facility Copy of this Inspection Report sheet.

Anthony Masters
Inspector's Signature

Individual In Responsible Charge [Please print]

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF SOLID & HAZARDOUS MATERIALSSOLID WASTE MANAGEMENT FACILITY INSPECTION REPORT
Continuation Sheet

DISTRIBUTION ROUTING

WHITE COPY	Regional Office
YELLOW COPY	Central Office
PINK COPY	Facility
GREEN COPY	Inspector

FACILITY NAME <i>EASTERN TRANSFER</i>		LOCATION <i>222 MORGAN AVE</i>		FACILITY NO. <i>247726</i>	DATE <i>03/31/98</i>	TIME <i>1000</i>
INSPECTOR'S NAME <i>Anthony Masters</i>		CODE <i>S</i>	PERSONS INTERVIEWED AND TITLES <i>LOU D'AMBROSIO - OPERATOR.</i>			
REGION <i>2</i>	WEATHER CONDITIONS <i>85°</i>		DEC PERMIT NUMBER <i>2-61194-1000971111111111</i>			
SHEET <i>2</i> of <i>2</i>	CONTINUATION SHEET ATTACHED <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		PART(S) 360— <i>N/A</i>		Attached	

Violations of Part 360 are Subject to Applicable Civil, Administrative, and Criminal Sanctions Set Forth in ECL Article 71.

Additional Violations May be Noted on Sheet One of this Inspection Report.

Provide site sketches, clarification, supplemental information, locations of photographs or samples and/or locations of violations.
[Uncorrected violations must be described in detail and located on a sketch].

1. FACILITY is continuing to construct the putrescible waste building. Concrete floor, drainage and some columns have been constructed. Informed facility operator that the construction is a violation and that it would be beneficial to cease the construction immediately. Informed facility if construction continues it will be considered an ~~extra~~ additional violation for each day it continues.

Anthony Masters
Inspector's Signature

I hereby acknowledge receipt of the Facility Copy of this Inspection Report sheet.

Lou D'Ambrosio
Individual in Responsible Charge (Please print)
Lou D'Ambrosio

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PASDNAL



PRESIDENT OF THE BOROUGH OF BROOKLYN

BOROUGH HALL 209 JORALEMON STREET BROOKLYN, N.Y. 11201

HOWARD GOLDEN
BOROUGH CLERK

1-718/802-3750
FAX 1-718/802-3770

April 16, 1998

Honorable Rudolph Giuliani
Mayor
City of New York
City Hall
New York, New York 10007

Dear Mayor Giuliani:

I am writing to express my deep concern over the illegal construction of a transfer station by Eastern Transfer, Inc. located at 222 Morgan Avenue, Brooklyn. The development of another illegal transfer station in Brooklyn after a decade of fighting such actions requires immediate action.

Based upon the inspection of my staff and reports from community members and representatives of the waste industry, Eastern Transfer is constructing a large waste transfer station without the necessary city and state solid waste management permits and without conducting an environmental review. In addition to failing to obtain the necessary permits to build a waste management facility, this company has not received approval from the Department of Business Services (DBS) to construct a waste transfer station. Eastern Transfer filed an application (permit #980039) to which DBS raised six objections. Eastern Transfer has not yet responded to the objections. Enclosed are photos of the significant level of construction activity occurring at this site.

I have brought this matter to the attention of the State Department of Environmental Conservation (DEC), which has issued two notices of violation to Eastern Transfer for its illegal actions and has informed the company that any further construction activity would be a knowing violation of state regulations and law. Eastern Transfer's response to the Notices of Violation from DEC was to step up its construction activity. My staff's most recent inspection of this facility on April 13, 1998, at 6:45 P.M., found significant construction activity occurring at the site. Workers at the site informed my staff that they were instructed to work over-time and that lights had been set up to allow them to work at night.

Mayor Giuliani
April 16, 1998
Page 2

Eastern Transfer operates this facility under a Consent Order with DEC that was issued to the previous operator of this site for opening an illegal transfer station and numerous environmental violations. The previous owner of this facility never complied with the terms of the Consent Order and was subsequently convicted of criminal activity. Given the continuation of this facility's disregard of the laws and regulations governing the operation of this noxious industry, I have requested that DEC revoke the Consent Order that allows this facility to operate. In 1997 DOS informed the operator of this site that it could no longer process raw garbage in an open lot.

Considering the flagrant violation of city and state law, I believe that it is incumbent upon the city administration to immediately issue a stop work order to Eastern Transfer. Given the history of this site and the current operator's actions, the city should take the necessary administrative and legal steps necessary to revoke Eastern Transfer, and its parent company Eastern Environmental's, ability to manage waste in New York City.

The most disturbing aspect of this situation is the information provided to my staff by employees of Eastern Transfer and its lawyer, Lawrence Schillinger. Eastern Transfer's staff indicated that the city was not only aware of Eastern Transfer's actions but had given its tacit approval of the actions. It is my understanding that DOS permit and inspection staff have visited this site but failed to take any action to stop this clear violation of city and state law.

Given the seriousness of this situation, I request that you personally investigate this matter. Until the city makes an assessment of this situation and addresses the serious issues raised by Eastern Transfer's actions and its representation of its relationship with DOS, the city administration must take no action regarding the issuance of a contract for the export of 2,400 tons per day of residential waste from Brooklyn and Queens.

Please advise me of your findings pertaining to this urgent matter.

Sincerely,


Howard Golden

Enc.

MAY-15 98 19:03 FROM:NYS DEC REGION 2 7184824026
BRUUKLYN B.P. TEL:7188023778

TO:5164320107 PAGE:07
May 15 '98 18:50 No.034 P.05

cc: Governor George E. Pataki
State Attorney General Dennis Vacco
Borough Presidents
Brooklyn District Attorney Charles Hynes
Manhattan District Attorney Robert Morgenthau
Brooklyn Congressional Delegation
Brooklyn State Delegation
Assemblyman Richard Brodsky, Chair, Environmental
Protection Committee
Brooklyn City Council Delegation
Councilman Stanley Michels, Chair, Environmental
Protection Committee
Brooklyn Community Board Chairs
Brooklyn Solid Waste Advisory Board
Citywide Recycling Advisory Board



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF SOLID & HAZARDOUS MATERIALS

6 NYCRR Subpart 360-11

SOLID WASTE MANAGEMENT FACILITY INSPECTION REPORT

[For Use at Transfer Stations]

DISTRIBUTION ROUTING

WHITE COPY Regional Office
YELLOW COPY Central Office
PINK COPY Facility
GREEN COPY Inspector

FACILITY NAME <u>Eastern Transfer</u>		LOCATION <u>222 MORRAN AVE</u>		FACILITY NO. <u>24476</u>	DATE <u>05/29/81</u>	TIME <u>1000</u>
INSPECTOR'S NAME <u>Anthony Masters</u>		CODE <u>S</u>	PERSONS INTERVIEWED AND TITLES <u>Joe Gajewski - operator</u>			
REGION <u>2</u>	WEATHER CONDITIONS <u>55°F cloudy</u>		DEC PERMIT NUMBER <u>2-6104-000971</u>			
SHEET <u>1</u> of <u>2</u>	CONTINUATION SHEET ATTACHED <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <u>ON BACK</u>		PART(S) 360— <u>N/A</u> Attached			

Violations of Part 360 are Subject to Applicable Civil, Administrative and Criminal Sanctions Set Forth in ECL Article 71, and as Appropriate, the Clean Water and Air Acts. Additional and/or Multiple Violations May be Described on the Attached Continuation Sheet.

This form is a record of conditions which are observed in the field at the time of inspection

Items marked NI indicate no inspection and do not mean no violation has occurred.

☐ PART 360 PERMIT ☒ ORDER ON CONSENT ☐ REGISTERED ☐ EXEMPT ☐ COMPLAINT

FACILITY MANAGEMENT

1. Solid waste management facility is authorized and management occurs within approved area. 360-1.7(a)(1),(b); 360-1.8(h)(5)
2. Incoming solid waste is monitored by a control program for unauthorized waste, and solid waste materials accepted are those authorized and approved for management at the facility:
 - a. Control Program. 360-1.14(e)(1)
 - b. Department Approved Facility for Specific Wastes. 360-1.14(f); 360-1.14(a),(m)
 - c. Signs. 360-11.4(c)*
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 - a. Maintenance of Facility Components/Site Grading. 360-1.14(f)(1)*
 - b. Adequate Equipment. 360-1.14(f)(2)*
 - c. Drainage. 360-11.4(f)*
4. Operational records are available where required:
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 - b. Self Inspection Records. 360-1.14(i)(2)
 - c. Permit Application Records. 360-1.14(i)(3)
 - d. Monitoring Records. 360-1.14(i)(4)
 - e. Facility Operator Records. 360-1.14(u)(1)*
 - f. Daily Log of Solid Waste. 360-11.4(i)*

OPERATION CONTROL

5. Solid waste, including blowing litter, is sufficiently confined or controlled. 360-1.14(j); 360-11.4(e)
6. Dust is effectively controlled, and does not constitute an off-site nuisance. 360-1.14(k)
7. On-site vector populations are prevented or controlled, and vector breeding areas are prevented. 360-1.14(l); 360-11.4(e)
8. Odors are effectively controlled so that they do not constitute a nuisance. 360-1.14(m); 360-11.4(e)

WATER

9. Solid waste is prevented from entering surface waters and/or groundwaters. 360-1.14(b)(1)
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ACCESS

11. Access to the facility is strictly and continuously controlled by fencing, gates, signs, natural barriers or other suitable means. 360-1.14(d)*
12. On-site roads are passable. 360-1.14(n)*

WASTE HANDLING

13. Adequate storage for incoming solid waste is available. 360-11.4(g)*
14. Putrescible solid waste is removed when transfer containers are full, or within seven days of receipt. 360-11.4(l)*
15. Processing, tipping, sorting, storage, compaction, and related activities are in an enclosed or covered area [for transfer stations receiving more than 50,000 cubic yards or 12,500 tons of solid waste annually]. 360-11.4(n)(1)*
16. Incoming waste is weighed or measured before unloading [for transfer stations receiving more than 50,000 cubic yards or 12,500 tons of solid waste annually]. 360-11.4(n)(2)*
17. Station is cleaned or washed down each day to prevent odors and other nuisance conditions [for transfer stations receiving more than 50,000 cubic yards or 12,500 tons of solid waste annually]. 360-11.4(n)(3)*

OTHER

On Continuation Sheet Identify any other violations.

Does Not Apply To A Registered Transfer Station

I hereby acknowledge receipt of the Facility Copy of this Inspection Report sheet.

Inspector's Signature

Individual In Responsible Charge (Please print)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF SOLID & HAZARDOUS MATERIALSSOLID WASTE MANAGEMENT FACILITY INSPECTION REPORT
Continuation Sheet

DISTRIBUTION ROUTING

WHITE COPY	Regional Office
YELLOW COPY	Central Office
PINK COPY	Facility
GREEN COPY	Inspector

FACILITY NAME <u>Eastern Transfer</u>		LOCATION <u>222 MORGAN AVE</u>		FACILITY NO. <u>244576</u>	DATE <u>05/21/98</u>	TIME <u>10:40</u>
INSPECTOR'S NAME <u>Anthony Masters</u>		CODE <u>5</u>	PERSONS INTERVIEWED AND TITLES <u>Joe Bajski - operator</u>			
REGION <u>2</u>	WEATHER CONDITIONS <u>55°F cloudy</u>		DEC PERMIT NUMBER <u>2-61104-0009711</u>			
SHEET <u>2</u> of <u>2</u>	CONTINUATION SHEET ATTACHED <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		PART(S) 360- <u>n/a.</u> Attached			

Violations of Part 360 are Subject to Applicable Civil, Administrative, and Criminal Sanctions Set Forth in ECL Article 71.
Additional Violations May be Noted on Sheet One of this Inspection Report.

Provide site sketches, clarification, supplemental information, locations of photographs or samples and/or locations of violations.
[Uncorrected violations must be described in detail and located on a sketch].

1. FACILITY WAS OPERATING C&D YARD AT TIME OF INSPECTION.
ON SITE APPROX:

300 yd³ C&D
100 yd³ C&D SCREENINGS
50 yd³ metal
100 yd³ DIRT, ROCK, CONCRETE

2. A review OF incoming logs revealed
on 5/11/98 - 2200 yd³ C&D incoming
5/9/98 - 855
5/8/98 - 2,388
5/7/98 - 2,574

3. A review of outgoing logs revealed
demo goes to Oak Ave, Brookhaven, L.A.S., Bunker, 710
Screens go to Brookhaven
Dirt, rock, conc goes to S.I.
metal goes to Hoyo

4. FACILITY'S CONSENT ORDER HAS EXPIRED AS OF 5/7/98
AND IS OPERATING WITHOUT AUTHORIZATION.

Anthony Masters
Inspector's Signature

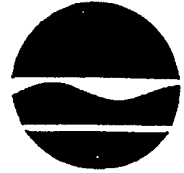
I hereby acknowledge receipt of the Facility Copy of this
Inspection Report sheet.

Individual in Responsible Charge (Please print)

Signature

Date

May 15, 1998



John P. Cahill
Commissioner

VIA TELECOPY (518) 465-1585

Thomas S. West, Esq.
LeBoeuf, Lamb, Green & MacRae, LLP
One Commerce Plaza, Suite 2020
99 Washington Avenue
Albany, New York 11101

Re: Eastern Transfer of New York, Inc.--222 Morgan Avenue, Brooklyn

Dear Mr. West:

I wish to formally acknowledge receipt of your letter of May 13, 1998 and to confirm our telephone discussions.

As we have already discussed, I specifically object to your distortion of our telephone discussion, and wish to confirm that I emphatically deny ever stating that "Mr. Gallay admitted that he was advised of the construction proximate to the transfer of the building."

Finally, I remind you that the 1990 Consent Order expired on May 7, 1998. As the Region informed your co-counsel, Mr. Schillinger, on May 8, reiterated on May 11 to Mr. Schillinger, Eastern's General Counsel Bob Kramer, and Senior Vice President Robert Donno, and repeated to you on May 12, the consent order will not be extended. Eastern has no basis whatsoever to believe that it is free to continue any operations now that the order has expired and Eastern concededly, has not obtained required permits. Indeed, Eastern has not submitted information to allow the Department to complete the permit application. Accordingly, any further operations violate the Environmental Conservation Law.

Very truly yours,

Laurie Silberfeld
Laurie Silberfeld
Regional Attorney *by [signature]*

LEBOEUF, LAMB, GREENE & MACRAE
L.L.P.

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

NEW YORK
WASHINGTON
ALBANY
BOSTON
DENVER
HARRISBURG
HARTFORD
HOUSTON
JACKSONVILLE

ONE COMMERCE PLAZA
SUITE 2020
99 WASHINGTON AVENUE
ALBANY, NY 12210-2820
(518) 465-1500
FACSIMILE: (518) 465-1585

LOS ANGELES
NEWARK
PITTSBURGH
PORTLAND, OR
SALT LAKE CITY
SAN FRANCISCO
BRUSSELS
MOSCOW
ALMATY
LONDON
(A LONDON-BASED
MULTINATIONAL PARTNERSHIP)

July 22, 1998

VIA HAND DELIVERY

Hon. Bernard J. Malone
Albany County Courthouse
Room 271
16 Eagle Street
Albany, New York 12207

Re: Eastern Transfer of New York, Inc. v. DEC

Dear Justice Malone:

This letter will serve as a follow-up to our settlement conference on June 24, 1998, to advise you of the status of settlement negotiations.

Following our conference on June 29, the parties participated in a conference call to discuss: 1) all outstanding permitting issues; 2) a process to obtain the Department's approval to complete certain construction items that are necessary for safety and security; and 3) settlement. Numerous follow-up conference calls have transpired relative to settlement. A progress report regarding each of those items is set forth below.

First, regarding permitting, the Department has indicated that Eastern's application is now technically complete. Rather than resolving the issue of whether the storm water discharges from the outside areas will be discharged to the New York City Wastewater Treatment Plant, the Department has agreed to process Eastern's pending application for a discharge to the English Kills under the terms of a State Pollution Discharge Elimination System Permit ("SPDES"), subject to the understanding that, if the City will accept the storm water discharges from the Facility, the Facility will pursue that avenue instead. The parties have also agreed to work cooperatively in approaching the City for a final

Hon. Bernard J. Malone
July 22, 1998
Page 2

decision regarding whether storm water discharges will be accepted by the City.

Regarding the Department's responsibilities under the State Environmental Quality Review Act ("SEQRA"), the Department indicated that it had not yet finalized its determination regarding the Facility, but that it would be doing so in the next thirty (30) days. Although the Department acknowledged that its review under the terms of the 1992 Stipulation and Order with the Department of Sanitation ("DOS") is limited to the impact of the Facility upon natural resources, the Department stated that it will be reviewing all SEQRA impacts at the same time. Thus, the Facility will be subject to the concurrent review of all SEQRA impacts by both the Department and DOS. In order to progress the SEQRA decision making, we have suggested that a meeting be held attended by representatives by Eastern, the Department has agreed to organize such a meeting. We are waiting for the Department to propose a date and time for such a meeting.

On the subject of limited building construction to complete safety and security measures, the Department requested a proposed list of specific items that would be completed with detail concerning the specific construction activities that are required. That information was transmitted to the Department and approved by the Department shortly thereafter. Accordingly, we have confirmed in writing that Eastern is authorized to conduct limited construction activities to complete certain safety and security measures. A copy of our confirmation letter is attached.

Finally, regarding settlement, we are disappointed to report that the parties have been unable to settle this dispute. We are also very concerned about the manner in which the Department engaged in negotiations that calls into question whether the Department has been acting in good faith. Throughout the negotiation process, Eastern has expressed its willingness to meet reasonable demands by the Department, if settlement would facilitate interim operating authority that would allow Eastern to meet the requirements of the New York City bid. The Department, in contrast, seemed to look for every opportunity to build an obstacle to settlement. For example, as of Friday, July 10, 1998, the Department had interposed a settlement demand totaling \$550,000. When we reported on Monday, July 13, 1998, that Eastern would meet that demand, the Department responded by increasing the demand to \$700,000. The Department also announced at that time that they would not allow any construction and demolition debris operations, even though the outdoor construction and demolition debris processing has never been a significant issue. Later that week,

Hon. Bernard J. Malone
July 22, 1998
Page 3

following further negotiations, the Department reported a "take-it-or-leave-it" offer that involved limited operations regarding both putrescible waste and construction and demolition debris and \$700,000 in penalties and environmental benefit projects. Eastern responded by indicating that it was inclined to agree to those terms as long as the language of the settlement document reflected what was being transmitted verbally. The Department agreed to provide a written settlement document by last Friday.

To date, no written settlement has been forthcoming from the Department and we were advised on Tuesday that the Department has decided not to pursue settlement at all. This is, of course, the exact same treatment that Eastern received in May of this year when it was promised by Regional Director Kris that it would be able to resolve the building construction issue with a consent order and a modest fine (\$7,500). The unwillingness of the Department to compromise this dispute calls into question whether the Department has been acting in good faith. It is also a factor that should be considered by the Court when it balances the equities in this matter.

Under these circumstances, we have no choice but to request that your Honor render a decision on Eastern's pending motion for a preliminary injunction at your earliest convenience. As discussed in chambers, both the public interest and Eastern's interests continue to be irreparably harmed every day that the Facility remains closed. In order to document the continuing harm to Eastern and the public interest, we are enclosing a letter from the Department of Sanitation, dated July 9, 1998, which confirms that Eastern was required to demonstrate its right to operate by July 23, 1998. As a result of the Department's failure to consummate the agreed settlement terms, Eastern has lost its contract with New York City. Similarly, we are enclosing copies of recent news articles which document recent price increases for waste disposal in New York City for reasons that include the recent closure of transfer stations (including Eastern) in New York City. Simply put, as a direct consequence of Facility closure, the public interest has been, and continues to be, harmed through price increases for waste disposal.

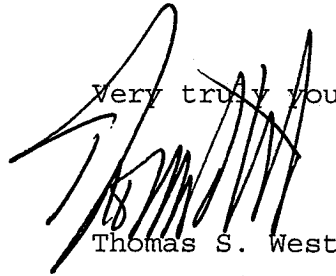
Also, you should be aware that other bids will be solicited from New York City in the near future. For example, Eastern is anticipating another bid request that will be available in September 1998. Accordingly, it remains in the public interest for this Court to issue a preliminary injunction confirming Eastern's on-going operating authority.

Hon. Bernard J. Malone
July 22, 1998
Page 4

Finally, I am enclosing a copy of a recent decision obtained by this office relative to a solid waste facility in Allegany County. That decision demonstrates the propriety of issuing a preliminary injunction to maintain facility operations pending the outcome of the litigation. Here, similar relief is appropriate. In 1990, the Department agreed that it would adjudicate disputes concerning continued operating authority. The Department has commenced such an adjudicatory proceeding at the administrative level. Pending the outcome of a final resolution of the many factual and legal issues associated with this dispute, this Court should maintain the status quo by granting preliminary injunctive relief.

Thank you for your continuing attention to this matter.

Very truly yours,



Thomas S. West

TSW:tsh
enclosures

cc: Maureen Leary, Esq. (with enclosures) (via hand delivery)
Eastern Transfer of New York, Inc.✓

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L.L.P.

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MULTINATIONAL PARTNERSHIP)

June 29, 1998

VIA FACSIMILE

Maureen F. Leary, Esq.
Assistant Attorney General
New York State Department of Law
Environmental Protection Bureau
State Capitol
Albany, New York 12224

Laurieann Silberfeld, Esq.
Regional Attorney
New York State Department of
Environmental Conservation
Division of Air Resources
Region 2
47-40 21st Street
Long Island City, New York 11101

RE: Eastern Transfer of New York, Inc. v. DEC,
Index No. 2755-98

Dear Maureen and Laurieann:

This letter will serve to confirm the verbal authorization granted by the Department and the State of New York for Eastern Transfer of New York, Inc. ("Eastern") to complete certain specific building construction measures that are necessary for safety and security purposes in accordance with the draft letter dated June 24, 1998, transmitted to you by facsimile. Specifically, you have authorized the following tasks:

1. Roll Up Doors and Passage Doors: The doors are need to prevent access to the property and into the building by trespassers and other unauthorized parties who could be injured from falling into the open tipping pits. The doors will also preclude access into the building by rodents, birds and other nuisance vectors which could build nests and damage equipment.

Maureen F. Leary, Esq.
Laurieann Silberfeld, Esq.
June 29, 1998
Page 2

A sub-contractor will install the overhead doors. A four person crew will install the remaining six doors using a mobile ladder truck and service vehicle. Tracking systems will be installed on the inside of the entry, a drum cylinder containing the roll up door will be installed above each door opening and a motor will be installed to the right of the drum cylinder.

The approximate time to complete this task is seven working days.

2. Electrical Connection: Electric service for the building is needed for the operation of roll-up doors, the interior/perimeter security lighting, and to power the fire alarm and sprinkler system.

The task requires the excavation of a trench between the old building and the new building. A new cinder block and pre-cast concrete electrical room needs to be constructed within the old shop area. The construction must meet code requirements as to be able to withstand an electrical fire or transformer malfunction. The electrical room, switch panels and circuitry have already been installed in the new building. A step-up transformer will be installed in the old shop area.

The approximate time to complete this task is three weeks.

3. Sprinkler Hook-Up: This system is needed for basic fire prevention.

This system requires the core drilling the pre-cast, hollow core concrete roof plank and the reconnection of the fire riser. The fire riser will be reconnected to the fire sprinkler assembly.

This task will require three working days.

4. Water Hook-Up: Water is needed to supply water to the sprinkler system.

This project requires trenching and placement of approximately 70 linear feet of water connecting

Maureen F. Leary, Esq.
Laurieann Silberfeld, Esq.
June 29, 1998
Page 3

old and new building, a pressure test to check for leaks and the backfilling of the trench.

The approximate time to complete this work is one week.

5. Oil/Water Separator: The oil/water separator is needed to provide drainage for sprinkler system in event of a fire. In the event of a fire, oily residues from electrical wiring and equipment will be produced. The oil water separator will filter out these oily residues prior to discharge into sewer.

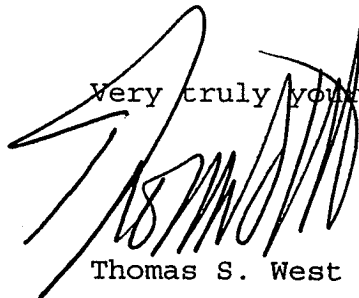
This task requires the excavation of concrete in the old shop area, the excavation of a trench and placement of new drainage pipe to connect the oil separator to a new pump chamber. Also, the drainage must be tied into existing sewer connection.

The approximate time for completion is three weeks.

Although not discussed, implicit in your authorization to proceed is the understanding that the Department will not take any enforcement action against Eastern for any violations of the Environmental Conservation Law or the regulations promulgated by the Department by reason of the specific construction activities identified in this letter. Likewise, Eastern will not utilize the authorization to proceed with these limited construction activities as an admission, declaration against interest or an estoppel in the pending litigation matters.

Thank you for your cooperation regarding this aspect of the case.

Very truly yours,



Thomas S. West

TSW:tsh
cc: Eastern Transfer of New York, Inc.

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sanitation

BUREAU OF WASTE DISPOSAL
125 Worth Street
New York, New York 10013

VIA FAX TO 718 821-5289, AND
CERTIFIED MAIL, RETURN RECEIPT REQUESTED

July 9, 1998



Louis D. Paolino, Jr.
President
Eastern Transfer of New York, Inc.
1281 Metropolitan Avenue
Brooklyn, New York 11237


Dear Mr. Paolino:

As you are aware, your firm submitted a bid in response to the Department of Sanitation's (the "Department's") solicitation for bids for the Contract for the Export of Municipal Solid Waste From the Boroughs of Brooklyn and Queens (PIN 82798WD00009). In your firm's bid, Eastern Transfer of New York, Inc.'s transfer station located at 222 Morgan Avenue, Brooklyn, New York, was designated as the putrescible solid waste transfer station ("Transfer Facility") at which refuse delivered by the Department of Sanitation (the "Department") and its representatives would be accepted for processing and transport to an out-of-City waste disposal facility.

The solicitation requires that in order to be considered for an award, a bidder must obtain and submit to the Department proof that the Transfer Facility has all required New York State and New York City licenses, permits and other authorizations to operate a putrescible solid waste transfer station prior to the date of Notice of Award. The Department anticipates that it will issue Notice of Award on or about July 31st 1998. In order for the Department to proceed with its evaluation of your firm's bid, and determine whether to consider Eastern Transfer of New York, Inc.'s Transfer Facility as a potential candidate for a Contract award the Department requests that your firm supply the Department with proof that Eastern Transfer of New York, Inc.'s transfer station located at 222 Morgan Avenue, Brooklyn, New York, has all required New York State and New York City permits, licenses and other authorizations for the operation of a putrescible solid waste transfer station within ten (10) business

12-21-97

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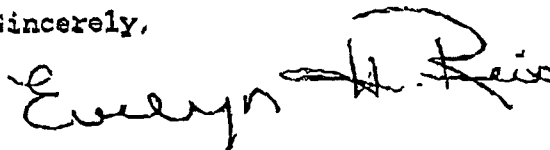
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days from the date of this letter, i.e., by July 23rd 1998. Failure to submit the requested information will result in a determination that your firm's bid is non-responsive, and the bid will be rejected.

Please address any questions concerning this request to the undersigned, or to the contract manager, David Nati, Director, Export Contract Management Unit. Mr. Nati may be reached at 212 788-3908. I may be reached at 212 788-3730.

Sincerely,



Evelyn H. Reis

cc: Leslie Allan, Deputy Commissioner for Legal Affairs
Martha K. Hirst, Deputy Commissioner, Solid Waste
Steven Lawitte, Deputy Commissioner for Financial Management
and Administration
Peter Montalbano, Director, Bureau of Waste Disposal
Ronald W. Blendermann, Assistant Commissioner/Agency Chief
Contracting Officer
Lorenzo N. Cipollina, Assistant Commissioner, Planning and
Budget
James S. Strauss, Assistant Commissioner, Legal Affairs
Martin Ballew, Deputy Director, Bureau of Waste Disposal
David Nati, Director, Export Contract Management Unit

W/ EXC-87.4

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----	x	
EASTERN TRANSFER OF NEW YORK, INC.)	
)	COMBINED VERIFIED
Plaintiff-Petitioner,)	PETITION AND
)	COMPLAINT
)	
-against-)	Index No: 2755-98
)	
NEW YORK STATE DEPARTMENT OF)	Hon.
ENVIRONMENTAL CONSERVATION)	
)	
Defendant-Respondent.)	
-----	x	

Plaintiff-Petitioner, Eastern Transfer of New York, Inc. (hereinafter "Eastern" or "Plaintiff"), by and through its attorneys LeBoeuf, Lamb, Greene & MacRae, L.L.P., as and for a Verified Petition and Complaint (hereinafter the "Complaint") against Defendant-Respondent, the New York State Department of Environmental Conservation (hereinafter the "Department," "Defendant" or "DEC"), respectfully alleges as follows:

PRELIMINARY STATEMENT

1. This combined proceeding and action is commenced pursuant to Articles 78 and 30 of the Civil Practice Law & Rules ("CPLR") to challenge and seek redress for the Department's termination (the "Termination") of operating authority for Eastern's solid waste transfer facility located at 222 Morgan Avenue, Brooklyn, New York 11211 (the "Facility"). This Termination deprives Eastern of its rights under the state common law, state statutory law, and the federal and state constitutions, and violates the state Administrative Procedure Act ("SAPA").

2. More specifically, the Facility has been continually operating as a waste transfer station since prior to the enactment of the DEC solid waste regulations, 6 NYCRR Part 360 which, for the first time, required such facilities to be permitted pursuant to regulations promulgated by the Department. In addition, since 1989 the Facility has been operating under a Consent Order originally entered into between the Department and the then-owner of the facility, as superseded by the terms of an Order on Consent (Consent Order No. R2-2564-89-08) dated June 20, 1990. This 1990 Consent Order has been renewed continuously by the Department on a pro forma basis every 90 days until the Termination, on or about May 11, 1998. The Termination has, thereby, resulted in (i) a deprivation of Eastern's vested right to operate the facility, (ii) a denial of Eastern's right to due process under the due process clauses of the 5th and 14th Amendments to the U.S. Constitution and Article 1, §§ 6 and 7 of the New York State Constitution, (iii) a deprivation of Eastern's civil rights pursuant to the Civil Rights Act of 1891, 17 Stat. 13, 42 U.S.C. § 1983, and (iv) a violation of SAPA § 401(2).

3. Accordingly, Plaintiff seeks: (a) a declaration declaring that Eastern is entitled to continue operation of the Facility pursuant to the terms of the 1990 Consent Order until such time as Eastern's Part 360 permit application for the facility is finally determined; (b) a declaration that the Termination is a denial of Eastern's rights pursuant to Due Process Clauses of the

Fifth and Fourteenth Amendments of the U.S. Constitution and Article 1, §§ 6 and 7 of the New York State Constitution; (c) a declaration that the 1990 Consent Order has not expired and that Eastern has the continuing authority to operate the Facility pursuant to SAPA § 401(2) pending final resolution of Eastern's application to renew the 1990 Consent Order; (d) preliminary and permanent injunctive relief restraining and enjoining the Department from terminating Eastern's authority to operate and/or taking any action which is inconsistent with Eastern's statutory and federal and state constitutional rights pending review of its application for renewal of the 1990 Consent Order; and (e) monetary damages, for the direct and consequential damages sustained by Eastern, together with attorneys fees.

JURISDICTION AND VENUE

4. This Court has jurisdiction of this action to issue relief herein pursuant to Section 3001 of the CPLR, Articles 4 and 78 of the CPLR, and the common law of the State of New York.

5. Eastern is a wholly owned Delaware corporation organized and existing under the laws of the state of Delaware, which maintains its principle place of business at 1281 Metropolitan Avenue, Brooklyn, New York. Eastern currently owns and operates a solid waste transfer facility and recyclables handling recovery facility located at 222 Morgan Avenue, Brooklyn New York.

6. The DEC is a department of the State of New York organized and existing under the laws of the State of New York, with its Regional office located at 47-40 21st Street, Long Island City, New York and principal office located at 50 Wolf Road, Albany New York. Venue is proper in Albany County pursuant to CPLR § 505(a) by reason of the fact that the DEC maintains its principal office in Albany County.

GENERAL ALLEGATIONS

BACKGROUND

7. In 1987, New York Carting Co., Inc. ("New York Carting") began operation of the site located at 222 Morgan Avenue Brooklyn New York as a solid waste transfer station and recyclables handling and recovery facility. At that time, upon information and belief, the Facility was not subject to the substantive authority of either the Department or the New York City Department of Sanitation (the "DOS"). In this respect, no permits were required from either agency for New York Carting to operate the Facility.

8. Approximately a year subsequent to the implementation of operations at the Facility, in 1988, the NYS DEC solid waste regulations, 6 NYCRR Part 360 (the "Regulations"), were amended to include specific permit requirements for waste transfer facilities. These regulations required, for the first time, that the Facility be permitted pursuant to the authority of the Department. These regulations also required the enclosure of putrescible waste handling operations.

9. Pursuant to this new regulatory authority, on August 10, 1989, the Department and New York Carting entered into an Order on Consent (Department File No. R2-2002-88-10). In addition, on December 29, 1989, New York Carting and the Department entered into an Agreement of the Parties whereby the DEC granted New York Carting temporary authority to operate the Facility under the terms of the 1989 Consent Order. That temporary authority was extended through June 22, 1990.

10. Upon information and belief, the Department utilized these sort of consent orders throughout the Borough of Brooklyn and in other areas of New York City as a substitute for the permits required under the Regulations, or as a form of temporary license pending the issuance of long-term permits. Upon information and belief, there remain approximately 20 solid waste transfer facilities in the City of New York which have been operating under these renewable consent orders for upwards of 10 years. The use of consent orders as a licensing scheme led many involved to interpret the temporary authorization as permits. Annexed hereto and incorporated herewith as Exhibit "A" is a letter from the DOS, dated December 23, 1991, which referred to the DEC Consent Order as a DEC "permit."

11. On June 20, 1990, as a result of administrative litigation between the Department and New York Carting, New York Carting and the Department entered into a new Consent Order, R2-2631-89-10, (the "1990 Consent Order") which superseded the 1989

Consent Order. The 1990 Consent Order provided for, among other things, (i) temporary authority to operate the Facility for 120 days with a provision for renewal in writing, (renewal was contingent upon New York Cartings strict compliance with the terms and conditions of the provisions of the consent order, the Departments Part 360 Regulations and the New York State Environmental Conservation Laws (the "ECL"), and (ii) conditions for operation, including (a) that the Facility could not receive more than 5,000 cubic yards of putrescible material and not more than 5,000 cubic yards of non-putrescible waste material per day; (b) that New York Carting shall control vectors, dust, and odors so that they do not constitute a nuisance or hazard to the public and prevent the uncontrolled movement of material off the site due to wind, rain, and other elements, and (c) that New York Carting shall use all practicable means pursuant to the Regulations to mitigate odors from putrescible materials on the site, and to prevent such odors from extending beyond the property line. A true and correct copy of the 1990 Consent Order is annexed hereto and incorporated herewith as Exhibit "B." Significantly, the 1990 Consent Order requires New York Carting to handle all leachate and runoff from any and all material at the Facility in a manner approved by either New York City or the DEC. Also of significance is the fact that in the 1990 Consent Order, the Department agreed that most violations, except certain violations not relevant here, would be processed under 6 NYCRR Part 622; i.e., that Respondent could be provided

notice and an opportunity for an adjudicatory hearing prior to the termination of operations. Exhibit "B," ¶ 5.

12. After the June 20, 1990, execution of the Consent Order, the Consent Order was renewed by the Department, continuously, every 90 days, for over eight (8) years. Annexed hereto and incorporated herewith as Exhibit "C" are true copies of the renewal notifications from the Department and correspondence to the Department relating to renewal during that period. These renewals were made on a routine basis despite the Department's knowledge that the Facility was conducting putrescible waste operations in the open in violation of both Department and DOS regulations.

13. In addition, the 1990 Consent Order contained a provision requiring that, as a condition to renewal, that New York Carting submit a solid waste transfer station Part 360 permit application. Upon receipt of the application, the DEC was required to "expeditiously review it it [sic] compliance with 6 NYCRR 621.5 et. seq." The Part 360 permit application was submitted on September 27, 1990. Yet, the Department still has not completed its compliance review of that application.

14. Also in 1990, the City Council for the City of New York enacted Local Law 40 - 1990 governing the issuance of permits for putrescible and non-putrescible transfer stations. Local Law 40 consolidated permitting authority for both putrescible and non-putrescible waste with the DOS. Prior to 1990, upon information and

belief, the New York City Department of Health had permitting authority with respect to putrescible waste. Upon further information and belief, the New York City Department of Health issued New York Carting a permit with respect to the putrescible waste.

15. Thereafter, in or about 1992, following litigation between the Department and the DOS, the Department and DOS entered into a stipulation filed in the Supreme Court, Albany County, providing that the agencies would obtain co-lead agency status with respect to project review pursuant to the New York State Environmental Quality Review Act ("SEQR") and the New York City Environmental Quality Review Act ("CEQR").

16. In or about 1994, New York Carting transferred the Facility to Clean Venture, Inc. d/b/a New York Materials Recycling Company ("Clean Venture"). Pursuant to this transfer, Clean Venture was substituted by the Department as Respondent on the 1990 Consent Order, obtaining operating authority for a volume of 10,000 cubic yards of waste. Annexed hereto and incorporated herewith as Exhibit "D" is a true copy of the Department letter approving substitution of Clean Venture.

17. In addition, on July 31, 1994, Clean Venture obtained from the DOS a non-putrescible solid waste transfer station permit for the Facility. The permit provided that Clean Venture's volume of non-putrescible waste was not to exceed 5,000 cubic yards. That permit has been renewed annually since issuance.

18. On or about July 25, 1996, the DEC modified the 1990 Consent Order, R2-2631-89-01, by permitting Clean Venture to store a maximum capacity of 5,000 cubic yards of construction and demolition ("C&D Debris") debris for a maximum of 48 hours from receipt and 7,500 cubic yards of recognizable, uncontaminated waste for a maximum of 60 days from receipt, and 2,000 cubic yards of municipal (i.e., putrescible) waste for a maximum of 24 hours from receipt. Annexed hereto and incorporated herewith as Exhibit "E" is a true copy of the DEC's July 25, 1996 approval letter. Again, the Department authorized the transfer and storage of putrescible waste at an unenclosed facility, contrary to the requirement of its own regulations and the regulations of the DOS.

REQUIREMENT TO ENCLOSE PUTRESCIBLE WASTE FACILITY

19. Early in 1995, the DOS became increasingly concerned about Clean Venture's continuing outdoor operations and the potential consequences of conducting putrescible waste operations in an unenclosed area. Annexed hereto and incorporated herewith as Exhibit "F," is a true copy of a letter dated April 20, 1998 from the DOS to the DEC that details the history of the DOS's concern. As a result of these concerns, the DOS indicated to Clean Venture, that it would not renew the Compliance Agreement. Clean Venture then commenced an article 78 proceeding in New York State Supreme Court, inter alia, to compel DOS to renew the authorization to operate. The Court granted a temporary restraining order and

preliminary injunction and, thereby, provided the Facility with Court-ordered authorization to operate.

20. Thereafter, on December 2, 1996, the DOS entered into a Stipulation and Order with Clean Venture (the "1996 DOS Stipulation"), a true copy of which is annexed hereto and incorporated herewith as Exhibit "G". The 1996 DOS Stipulation was filed with the New York City County Clerk on December 24, 1996. The 1996 DOS Stipulation resolved the outstanding issues between the DOS and Clean Venture. In this respect, as of the date of the 1996 DOS Stipulation, the only aspect of the physical operation of the putrescible portion of the transfer station that was not in compliance with applicable law was that the operation was not fully enclosed as required by Admin. Code § 16-131(b)(b) of the City of New York. Accordingly, as a condition of the 1996 DOS Stipulation, which permitted Clean Venture to increase its volume of waste in accordance with DEC approval granted on July 25, 1996, Clean Venture was required to enclose its putrescible waste operation no later than July 31, 1997, and to complete an environmental impact assessment to DOS's satisfaction no later than July 31, 1997. Upon information and belief, a significant factor leading DOS to require enclosure of putrescible waste handling was the need to control leachate and runoff from the unenclosed operation. Other factors included the potential for odors and noise.

EASTERN'S ADDITION AS RESPONDENT ON THE 1990 CONSENT ORDER

21. On or about July 1997, Eastern entered into negotiations to purchase the Facility from Clean Venture. Pursuant to those negotiations, on August 8, 1997, Eastern, through its representative, contacted the Department with respect to adding Eastern as a Respondent to the 1990 Consent Order. In this respect, the Department was notified that, upon transfer of the Facility to Eastern, the construction of the enclosure for the putrescible waste, as required by the 1996 DOS Stipulation, would be commenced. In addition to verbal notification, representatives of Eastern provided a copy of a proposed DOS Stipulation and Order to representatives of the DEC.

22. Thereafter, with full knowledge of the planned construction activities, on or about September 3, 1997, by letter, the Department agreed to substitute Eastern as a Respondent to the 1990 Consent Order, subject only to confirmation that Eastern was actually authorized by Clean Venture to take over the Facility. See Exhibit "D". This approval by the Department was consistent with Eastern's conversations with the Agency with respect to Eastern's plans for the enclosure. In fact, the Department had been encouraging and enthusiastic with respect to Eastern's plans to commence building the enclosure because, at the time construction of the enclosure was commenced, the Facility was the only putrescible waste transfer facility in New York City which was unenclosed.

23. Moreover, on or about September 5, 1997, the DOS issued to Eastern a solid waste transfer station enforcement order (the "1997 DOS Enforcement Order"), which effectively required Eastern to construct the enclosure. A true copy of the 1997 DOS Enforcement Order is annexed hereto and incorporated herewith as Exhibit "H". The following statements and conditions are contained in the 1997 DOS Enforcement Order:

* * *

7. Eastern Transfer of New York, Inc. a wholly owned subsidiary of Eastern Environmental Services, Inc. ("EES"), has agreed to acquire the Facility and to enclose the putrescible waste operation, to complete the environmental impact assessment process, and to redesign the Facility to mitigate its environmental impact; and
8. EES has submitted to the Department applications for permits to operate a putrescible and non-putrescible solid waste transfer station at the Facility; and
9. The [DOS] has issued a Notice of Violation No. E090735527 ("Notice") to Clean Venture for operating an unenclosed putrescible waste operation at the Facility, and [Eastern] has agreed to pay a civil penalty of no more than \$10,000 for the violation pursuant to §16-133(a)(2) of the Code; and

* * *

It is ordered that:

* * *

- D. Upon execution of this Order [Eastern] is authorized to accept process, and transfer putrescible solid waste on the following terms and conditions:
 - (2) All putrescible solid waste process and transfer operations shall be conducted within an enclosed structure, the plans and design of which are subject to [DOS's] review and approval.

24. Importantly, as of April 20, 1998, the DOS confirmed that Eastern "ha[s] complied with all of the terms of the 1997 DOS Enforcement Order." See Exhibit "F", p. 3, Letter dated April 20, 1998 from the DOS to the Department.

25. On or about September 9, 1997, Eastern stopped processing putrescible waste out-of-doors and began the process of completing the environmental assessment and upgrading the permit application pending before the Department to reflect Eastern's many commitments to improve the environmental quality of the operation, including Eastern's commitment to construct a 37,000 square foot building to enclose the putrescible waste handling operation. By April 1998, Eastern submitted all of the documents necessary to complete the environmental impact assessment process.

SOLID WASTE TRANSFER FACILITY PERMIT APPLICATIONS

26. On or about September of 1990, New York Carting submitted a permit application to the Department in conformance with the requirements of the 1990 Consent Order. In response, on or about September 30, 1995, the DEC issued a technical notice of completion and determined the Application to be without significant impact on natural resources. Annexed hereto and incorporated by reference herewith as Exhibit "I" is a true copy of a July 18, 1996 letter from the DEC confirming the DEC's findings with respect to the Application.

27. In the seven years following the submission of the 1990 application, the DOS and the Department still had not

completed the requisite environmental review under SEQRA or CEQR necessary to enable the Part 360 permit to be issued. Rather, in lieu of completing the environmental impact review process and issuing a Part 360 permit, the Department continued to renew the 1990 Consent Order every 90 days on a pro forma basis.

28. On or about November 30, 1997, prior to proceeding with construction of the enclosure, Eastern submitted to the DOS a permit application (the "DOS Application") for the operation of both a putrescible and non-putrescible solid waste transfer facility and a thorough Environmental Assessment Statement ("EAS"). The EAS, as submitted on November 30, 1997, was subsequently revised on March 1998. In addition, on February 4, 1998, Eastern submitted an engineering report to DOS in support of the DOS Application. As of April 1998, the DOS Application and EAS have been determined to be complete and are now being circulated for public review.

29. On or about February 4, 1998, Eastern also submitted to the Department a revised Application with respect to the Facility, specifically to describe the proposed enclosure. In this respect, having (i) submitted the completed Application, (ii) being aware of the excessively lengthy period over which environmental impact review occurred with respect to the solid waste transfer facility permitting process in New York, and (iii) having been permitted to continue to operate the Facility under the 1990 Consent Order, in fact a de facto permit or license, for almost

eight (8) years, Eastern understood that the construction of the enclosure, an improvement highly sought after by both the Department and DOS, should occur pursuant to the current 1997 DOS Enforcement Order and 1990 Consent Order pending completion of the environmental impact review process and issuance of permits for the Facility.

30. In its letter dated April 20, 1998, from the DOS to the DEC (Exhibit "F"), Eastern was lauded for the fact that completion of the indoor putrescible waste handling building was expected to be completed in the two months following April 20, 1998. In DOS's terms: "DOS consider[ed] this outcome a success." Id. at 4.

31. The construction, when completed, will do more than simply enclose the putrescible waste, it will also include (i) an engineered odor control system, (ii) a capture and pretreatment system for all free flowing liquids, and (iii) the use of a slab for the processing of C&D debris. Thus, the enclosure will serve to enhance environmental safety at the facility.

TERMINATION OF THE 1990 CONSENT ORDER

32. Pursuant to the 1990 Consent Order renewal process, which, as noted, had been occurring every 90 days on a pro forma basis for approximately eight (8) years, the 1990 Consent Order was scheduled for renewal on May 7, 1998. Per standard procedures, on May 7, 1998, Eastern requested, in writing, that the 1990 Consent Order be renewed. A true copy of the letter dated May 7, 1998

requesting renewal is annexed hereto and incorporated by reference herein as Exhibit "J". In addition, in several meetings and telephone conversations prior to May 7, 1998, representatives of Eastern requested and discussed with Department Staff renewal of the 1990 Consent Order.

33. Without a hearing or process of any kind, the renewal request was denied by the Department and Eastern's authorization to operate the Facility was terminated. Upon information and belief, the Department took this action on the premise that Eastern's construction of the enclosure violated the 1990 Consent Order by beginning construction of the enclosure for the Facility's putrescible waste processing prior to obtaining a Part 360 permit. Annexed hereto and incorporated by reference herewith as Exhibit "K" is a true copy of the March 1998 Notice of Violation from the DEC with respect to construction of the enclosure.

34. Construction of the enclosure, however, was required by the mandate of the 1990 Consent Order as set forth in ¶ 11, infra, in that the 1990 Consent Order specifically requires that, with respect to waste runoff and leachate management, the Facility handle leachate and runoff in a manner approved by either New York City or the DEC. Pursuant to the 1996 DOS Stipulation and the 1997 DOS Enforcement Order, New York City required the enclosure of the putrescible waste operation, in part, to control leachate and runoff.

35. In addition, the 1990 Consent Order requires, inter alia, that Respondent take all steps "practicable" to control odors, dust and noise. The construction of an enclosure is a "practicable" measure designed to control odors, dust and noise as is demonstrated by the fact that both DOS and DEC regulations require that putrescible waste processing be conducted in an enclosure. Therefore, construction of the enclosure is both consistent with, and required by, the 1990 Consent Order.

36. In addition, the 1990 Consent Order required compliance with the Part 360 Regulations. The standards contained in the Part 360 Regulations require that putrescible waste handling facilities be enclosed. See 6 NYCRR § 360-11.4(n). Therefore, the construction of the enclosure is consistent with, and required by, the 1990 Consent Order.

37. The Department was notified, and well aware, of Eastern's imminent construction of the enclosure, and, with that knowledge, substituted Eastern as a Respondent to the 1990 Consent Order. Thereafter, while construction of the enclosure was underway, the Department renewed the 1990 Consent Order. The February 10, 1998 renewal letter indicates that the Department inspected the Facility prior to renewal. Building construction began in January of 1998. Therefore, the Department issued the renewal with full knowledge of the ongoing construction activities.

38. Pursuant to paragraph V of the 1990 Consent Order, the Department is required to invoke the adjudicatory procedures of

6 NYCRR Part 622; i.e., provide Eastern with notice and an opportunity for a hearing, prior to terminating Eastern's operating authority. To date, the Department has not provided Eastern with any of the procedures specified in 6 NYCRR Part 622 or due process of the law.

EASTERN'S ATTEMPT TO RESOLVE THE CONTROVERSY

39. On May 13, 1998, LeBoeuf, Lamb, Greene & MacRae, L.L.P., litigation attorneys for Eastern, wrote to the Department asserting, inter alia, that not only was Eastern denied process under the Department's own regulations, but that under the State Administrative Procedure Act the Department could not summarily terminate Eastern's authority to operate the facility. Annexed hereto and incorporated herewith as Exhibit "L" is a true copy of the May 13, 1990 letter. The letter requested that Eastern be permitted to continue its C&D operation, pending a final determination on the alleged violations. Importantly, the C&D operation had nothing to do with the alleged violations. On May 15, 1998, however, the Department responded by refusing to consider our request. Annexed hereto and incorporated herewith by reference as Exhibit "M" is a true copy of the Department's responsive letter. Eastern replied that same day. A true copy of Eastern's response, also dated May 15, 1998, is annexed hereto and incorporated herewith as Exhibit "N."

DAMAGES

40. To date, Eastern has invested more than \$15 million dollars in the Facility -- \$10 million to purchase the facility and \$5 million for the enclosure -- all of which will be lost if Eastern's authority to operate is terminated. Moreover, Eastern is in a position to be awarded the Export Bid if the enclosure is completed and Eastern remains in operation. As a consequence, the disqualification of Eastern for that contract by reason of the Department's termination of Eastern's operating authority will lead to significant damages. Furthermore, Eastern is in the process of negotiating several contracts relative to putrescible waste handling. If the Facility remains closed, Eastern will lose these potential contracts and the customers will enter into contracts with other waste transfer stations. This loss of market share will be difficult to recoup, even if Eastern is eventually allowed to reopen. Given that the Department has already taken eight years to process a permit application for the Facility, there is no guarantee that the Department will be able to process the long overdue permit application in a timely manner.

AS AND FOR PLAINTIFF'S FIRST CAUSE OF ACTION AND REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF

41. Plaintiff repeats and realleges each and every allegation herein set forth.

42. The New York State Administrative Procedure Act, § 102(4), defines a license as follows:

"License" includes the whole or part of any agency permit, certificate, approval, suspension, charter, or similar form of permission required by law.

43. The New York State Administrative Procedure Act, § 401(2), provides for the continuation of licenses as follows:

When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court, provided that this subdivision shall not affect any valid agency action then in effect summarily suspending such license.

SAPA § 401(2) (emphasis added).

44. The 1990 Consent Order, in providing Eastern and its predecessors in interest with authority to operate the facility pursuant to 6 NYCRR Part 360 et. seq., is a form of "approval required by law." Accordingly, in all respects, the 1990 Consent Order is a license under SAPA § 102(4).

45. The activities encompassed and licensed under the 1990 Consent Order have been ongoing since 1987, and the 1990 Consent Order has been applicable to these activities at all times since 1989.

46. On May 7, 1998, Eastern made a timely application to renew the 1990 Consent Order pursuant to the procedures for renewal of the Order which had been followed over the previous eight (8) years.

47. Renewal of the 1990 Consent Order was summarily denied by the Department on or about May 11, 1998, and Eastern's authority to operate the facility was terminated.

48. Eastern's authority to operate the Facility under the 1990 Consent Order may not be terminated until the last day for seeking review of the Department order or a later date fixed by order of the reviewing court. The last day for seeking review of the Department order has not passed. Accordingly, Eastern may continue to operate the Facility.

49. In summarily terminating Eastern's operating authority, the Department failed to implement the procedures required by SAPA §§ 401(3) and 301.

50. Eastern has already invested more than \$15 million in the Facility and is in a position to lose a multi-million dollar contract on the basis of the Department's acts in terminating Eastern's' operating authority. In addition Eastern has ongoing arrangements with a number of waste haulers and is negotiating contracts with others relative to putrescible and non-putrescible waste transfer. Termination of Eastern's operations will cause those waste haulers to do business with other transfer stations. As a consequence, Eastern will lose valuable market share that it will be unable to restore.

51. By reason of the foregoing, Eastern has no adequate remedy at law.

52. Further, given (a) the extensive delays in permitting which Eastern has already suffered; (b) the monumental investment which Eastern has already made in the Facility on the basis of the DOS's and Department's explicit and implicit approval of the construction of the enclosure; (c) the comprehensive permit application requirements all of which Eastern has already satisfied; and (d) the lack of any evidence suggesting that the construction is anything but an environmental improvement, the equities mandate enjoining the Department from terminating Eastern's authority to operate the Facility.

53. By reason of the foregoing, Eastern is entitled to declaratory relief, declaring that the 1990 Consent Order has not expired and that Eastern has the continuing authority to operate the Facility, injunctive relief enjoining the Department from taking any action to terminate Eastern's authority to operate the Facility pending a final determination on the renewal of the 1990 Consent Order, and injunctive relief mandating that the Department expeditiously process Eastern's pending permit application.

**AS AND FOR PLAINTIFF'S SECOND CAUSE OF ACTION
AND REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF**

54. Plaintiff repeats and realleges each and every allegation herein set forth.

55. Eastern and/or its predecessors in interest have been continuously operating a solid waste transfer station and

recyclables facility on the location known as 222 Morgan Avenue, Brooklyn, New York since 1987.

56. The operation of the Facility as a solid waste transfer facility commenced prior to the enactment 6 NYCRR Part 360 which provided the Department with substantive authority to regulate such facilities.

57. After the enactment of 6 NYCRR Part 360, authority from the Department to operate the Facility has been continuously provided to Eastern and/or its predecessors in interest by 1990 Consent Order.

58. Eastern made a timely and sufficient Part 360 permit application in 1990, as modified in 1998, which a received DEC notice of technical completeness in 1995.

59. Eastern has made substantial investments and expenditures in its operations and has submitted all necessary Part 360 permit application and SEQR/CEQR materials.

60. To date, the Department has not denied Eastern's permit application.

61. By reason of the foregoing, Eastern is entitled to a declaratory judgment, declaring that Eastern has a vested right in the continued operation of the Facility, injunctive relief, enjoining the Department from taking any action that is inconsistent with Eastern's vested right, and injunctive relief mandating that the Department expeditiously process Eastern's pending permit application.

**AS AND FOR PLAINTIFF'S THIRD CAUSE OF ACTION
AND REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF**

62. Plaintiff repeats and realleges each and every allegation herein set forth.

63. Eastern's operating authority was terminated pursuant to a summary abatement procedure. Pursuant to New York Environmental Conservation Law, ECL § 71-0301, and 6 NYCRR § 620 summary abatement is only applicable when

. . . whenever the commissioner finds, after investigation, that any person is causing, engaging in or maintaining a condition or activity which is likely to result in irreversible or irreparable damage to natural resources, and relates to the prevention and abatement powers of the commissioner . . .

ECL § 71-0301; see also 6 NYCRR § 620.2. In all other circumstances, prior to ordering abatement a party must receive notice and hearing. Id.

64. The enclosure being erected by Eastern at the Facility enhances environmental safety and creates no imminent and substantial danger to the public health, safety, or welfare. In addition, the Facility has caused no environmental harm and it is fully in compliance with the standards set forth in 6 NYCRR Part 360, except to the extent that it does not have an enclosed location for the handling of putrescible waste. However, to the extent such an enclosure was necessary, Eastern had ceased processing putrescible waste.

65. Upon information and belief, the Department did not follow the procedures set forth in 6 NYCRR Part 620 in that the

Department did not issue any notice or process to Eastern, or make any of the findings required by statute and regulations.

66. Accordingly, summary abatement was patently improper with respect to the termination of Eastern's authority to operate the Facility on the basis of the alleged unpermitted construction of the enclosure. Rather, prior to termination of Eastern's operating authority, Eastern must be accorded an enforcement proceeding with hearing. Eastern, however, was denied any kind of hearing whatsoever.

67. Pursuant to the terms of the 1990 Consent Order, the Department agreed, in paragraph V, that it would not terminate the operating authority for the Facility without invoking the adjudicatory procedures required by 6 NYCRR Part 622, except for certain violations not relevant here.

68. Pursuant to the Department's own regulations, its well-settled interpretation and application of those regulations, and the Department's practices regarding terminating authority at other solid waste facilities, the Department has uniformly provided notice and an opportunity for a hearing prior to terminating operating authority at a facility.

69. Denial of an enforcement proceeding with a hearing constitutes a denial of Eastern's due process rights accorded under the 5th and 14th Amendments to the U.S. Constitution and Article 1, §§ 6 and 7 of the New York State Constitution.

70. By reason of the foregoing, Eastern is entitled to declaratory relief, declaring Eastern's due process rights under both state and federal law have been violated, declaratory relief, declaring that Eastern has a vested right in the continued operation of the Facility, injunctive relief, enjoining the Department from taking any action that is inconsistent with Eastern's right to due process of law, and injunctive relief mandating that the Department expeditiously process Eastern's pending permit application.

**AS AND FOR PLAINTIFF'S FOURTH CAUSE OF
ACTION AND REQUEST FOR DECLARATORY RELIEF,
INJUNCTIVE RELIEF AND MONETARY DAMAGES**

71. Plaintiff repeats and realleges each and every allegation herein set forth.

72. Upon information and belief, the Department terminated Eastern's authority to operate the Facility, for the purpose of forcing Eastern out of existence, restricting, for political purposes, the solid waste transfer activities within New York City.

73. In so terminating Eastern's operating authority the Department knew or should have known, that the Termination was in violation of Eastern's constitutional rights and decisions of the United States federal courts, including the Supreme Court Of the United States.

74. The termination of Eastern's operating authority constitutes action taken under color of state law, thereby implicating 42 U.S.C. § 1983.

75. The acts of the Defendant deprive Eastern of its rights, privileges and immunities as guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution.

76. Defendant knew that its acts in terminating Eastern's authority to operate the Facility would deprive Eastern of its rights, privileges and immunities as guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution.

77. The acts of Defendant in terminating Eastern's authority to operate the Facility, deprives Eastern of its property rights.

78. Termination of Eastern's authority to operate the Facility deprives Eastern of its constitutionally guaranteed rights, privileges and immunities, and Eastern will suffer irreparable harm if Eastern is not permitted to continue to operate the Facility.

79. The termination of Eastern's operating authority will cause Eastern damages in excess of \$15 million, an amount which exceeds the Department's economic means or financial resources.

80. Upon information and belief the termination of Eastern's authority to operate the facility was in bad faith and an integral part of a course of conduct to deprive Eastern of rights

guaranteed under the Constitution and the laws of the United States of America.

81. By reason of the foregoing, pursuant to 42 U.S.C. § 1983, Eastern is entitled to declaratory and injunctive relief as well as direct and consequential damages in an amount not less than Eastern's total investment in the Facility and Eastern's lost profits, together with attorneys fees.

WHEREFORE, Plaintiff respectfully demands judgment as follows:

1. On the First Cause of Action, a declaratory judgment, declaring that the 1990 Consent Order has not expired and that Eastern has the continuing authority to operate the Facility, and injunctive relief enjoining the Department from taking any action to terminate Eastern's authority to operate the Facility pending a final determination on the renewal of the 1990 Consent Order and mandating that the Department expeditiously process Eastern's pending permit application;
2. On the Second cause of action, a declaratory judgment, declaring that Eastern has a vested right in the continued operation of the Facility, and injunctive relief, enjoining the Department from taking any action that is inconsistent with Eastern's vested right and mandating that the Department expeditiously process Eastern's pending permit application;

3. On the Third Cause of Action, a declaratory judgment, declaring Eastern's due process rights under both state and federal law have been violated, and injunctive relief, enjoining the Department from taking any action that is inconsistent with Eastern's right to due process and mandating that the Department expeditiously process Eastern's pending permit application;

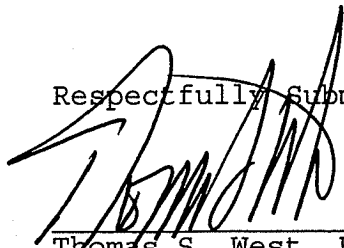
4. On the Fourth Cause of Action, pursuant to 42 U.S.C. § 1983, for declaratory and injunctive relief, enjoining the Department from taking any action that is inconsistent with Eastern's property other civil rights, and a judgment for money damages for Eastern's direct and consequential damages in an amount not less than Eastern's total investment in the Facility and Eastern's lost profits, together with attorneys fees;

5. For the costs, expenses and disbursements of the action; and

6. For such other and further relief as to this Court
may seem just equitable and proper.

Dated: May 18, 1998

Respectfully Submitted,



Thomas S. West, Esq.
LeBoeuf, Lamb, Greene &
MacRae, L.L.P.
One Commerce Plaza
Suite 2020
99 Washington Avenue
Albany, New York 12210
Tel: (518) 465-1500

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EASTERN TRANSFER OF NEW YORK, INC.)
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Plaintiff-Petitioner,)
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)
-against-)
)
)
NEW YORK STATE DEPARTMENT OF)
ENVIRONMENTAL CONSERVATION)
)
Defendant-Respondent.)
- - - - - X

AFFIDAVIT IN SUPPORT
OF MOTION FOR
PRELIMINARY
INJUNCTION

INDEX NO: 2755-98

HON.

LAWRENCE R. SCHILLINGER, being duly sworn, deposes and
says:

2. I represent Eastern Environmental Services, Inc., and its wholly owned subsidiaries Eastern Transfer of New York, Inc. and Eastern Waste of New York, Inc. with regard to, inter alia, regulatory matters before the New York State Department of Environmental Conservation (the "Department") and the New York City Department of Sanitation (the "DOS").

3. With respect to Eastern, I currently represent it before the Department and DOS on matters relating to its solid waste transfer and recyclables handling and recovery facility (the

"Facility") located at 222 Morgan Avenue, Brooklyn, New York. In particular, my representation of Eastern has included assistance with application for a DEC Part 360 permit for the Facility.

4. Prior to my representation of Eastern, from on or about 1991 through September 1997, I represented Clean Venture, Inc. ("Clean Venture"), a predecessor in title to Eastern, also with regard to, inter alia, regulatory matters pertaining to the Facility, which matters were before the Department and the DOS.

5. Concurrently with my representation of Clean Venture, I also represented New York Materials, Inc., with regard to, inter alia, the same regulatory matters before the Department and the DOS as Clean Venture.

FACILITY HISTORY

6. The site for the Facility was originally purchased by Newtown Steel, Inc. in 1983. Title to the property subsequently passed to Clean Venture. New York Carting, Co., Inc., ("New York Carting") then leased the site from Clean Venture. Upon information and belief, commencing in 1987, New York Carting operated the site as a solid waste management "transfer station," i.e. a facility used for the receipt of collected solid waste and its transfer to long-haul vehicles for trans-shipment to disposal sites.

7. At the time of initiating the solid waste transfer operation, the Department and DOS did not regulate solid waste transfer stations. However, due to the enactment of the

Department's Part 360 regulations pertaining to solid waste transfer facilities, such facilities became regulated by the Department in 1988. In 1989, New York Carting was found by the Department to be in violation of applicable law and regulation. The alleged violation was resolved through the entry of an Order on Consent dated August 10, 1989 (the "1989 Consent Order") and an Agreement of the Parties dated December 29, 1989. In the Agreement of the Parties, the Department granted New York Carting temporary authority to operate the Facility under the terms of the 1989 Consent Order.

8. Subsequent to the initiation of an Article 78 proceeding in the Supreme Court of the State of New York, County of Queens, initiated by New York Carting in which New York Carting sought mandamus to compel, directing the Department to process and issue permits to construct and operate the Facility, a new Order on Consent (the "1990 Consent Order") between the Department and New York Carting was entered into on or about June 22, 1990. Exhibit "B" to the Complaint. The 1990 Consent Order superseded the 1989 Consent Order, and provided, inter alia, for the continued operation of the solid waste facility by New York Carting, subject to various operating conditions, the timely submission of a permit application for the operation of the facility, and the payment of a fine. The fine related to alleged violations by New York Carting under the 1989 Consent Order.

9. Importantly, the 1990 Consent Order provided an

expiration date of 120 days from the date of its execution, and provided for the renewal of the Order for an additional period subject to New York Carting's compliance with the terms therein.

10. Pursuant to the 1990 Consent Order, a Permit application to construct and operate a solid waste management facility was timely filed by New York Carting with the Department on September 27, 1990. The 1990 Consent Order was subsequently renewed on or about every 90 days on a pro forma basis for the next eight (8) years. In fact, application for renewal was nothing more than a one sentence letter sent to the Department prior to each scheduled expiration of the 1990 Consent Order. Copies of these renewal letters are annexed to the Complaint as Exhibit "C." This type of Consent Order renewal practice by the Department has been common practice for many transfer stations in New York City. The routine nature of the renewal process is exemplified by the fact that in the early 1990s, the Department made all Consent Orders renewable every 90 days. This is why the Consent Order for the Facility has been renewed every 90 days even though the 1990 Consent Order contemplates 120 days.

11. Only after the conviction of New York Carting principal Paul Serra in the State of New Jersey on racketeering charges related to solid waste disposal, did the Department ever advise that it would not renew the 1990 Consent Order. In that case, when on October 19, 1991, the Department advised that the Order would not be renewed if the Facility were to continue to be

operated by Paul Serra and New York Carting, the Department authorized the substitution of PJ's Environmental Corp. ("PJ's") for New York Carting, Inc. Thereafter, the 1990 Consent Order was renewed on a pro forma basis, as before.

12. As a result of the need to substitute PJ's as Respondent, on November 18, 1991 and December 3, 1991, I requested that the Department modify the 1990 Consent Order to authorize PJ's Environmental Corp. as the site operator and Clean Venture, Inc. d/b/a New York Materials, Inc. as the site owner. Subsequent letters issued by the Department (See Complaint, Exhibit "C") provided for the renewal of the 1990 Consent Order by Clean Venture d/b/a New York Materials, Inc. (together with Clean Venture, "Clean Venture"), as Respondent.

PERMIT APPLICATION BY CLEAN VENTURE

13. Importantly, during this period, the Permit Application remained pending before the DEC. In this respect, the application was subject to review under the State ("SEQRA") and New York City ("CEQRA") Environmental Quality Review Acts. However, there was a dispute between the Department and New York City, which resulted in litigation between the agencies, as to whether the Department or the DOS should be "lead agency" responsible for review of City and State transfer station permit applications, as neither agency desired to be "lead agency." This dispute resulted in litigation between the Department and DOS which significantly delayed the processing of the permit application for the facility.

14. In 1992, a stipulation and order was entered into by the DOS and the Department which resolved that litigation. The stipulation provided for the two agencies to act as "co-lead" agencies for the purposes of conducting the necessary environmental review under the SEQRA and CEQRA and issuing a determination of environmental significance.

15. Subsequent to the resolution of these issues, but almost five years after the original Application was submitted, the Department finally notified Clean Venture, in 1995, that the Department had determined Clean Venture's Application to be technically complete. See Exhibit "I" to the Complaint. In addition, the Department determined that the project would not have a significant impact on the natural resources of the State. Despite these findings, a Part 360 permit was not issued to Clean Venture. Rather, the Department chose to continue renewing the Consent Order every 90 days without any meaningful progress on the permit application.

NEGOTIATIONS WITH THE DOS

16. In 1990, the New York City Council adopted a local ordinance, Local Law No. 40 of 1990, by which the DOS assumed City regulatory authority for solid waste transfer stations from the NYC Department of Health. Thereafter, the DOS promulgated regulations governing transfer stations. These regulations established operating standards for transfer stations, including a requirement that all putrescible solid waste be managed within an enclosed

structure, and that such enclosed structures provide for the control of odors and wastewater.

17. Early in 1995, the DOS determined that the Clean Venture facility was the only remaining unenclosed solid waste transfer facility. As a result, the DOS indicated to Clean Venture that it would not renew the Compliance Agreement between DOS and Clean Venture which had authorized the continued operation of the facility. Clean Venture then commenced an article 78 proceeding in New York State Supreme Court, inter alia, to compel DOS to renew the authorization to operate. The Court granted a temporary restraining order and preliminary injunction and, thereby, provided the Facility with Court-ordered authorization to operate.

18. Thereafter, on December 2, 1996, the litigation between Clean Venture and the DOS was resolved through the entry of a Stipulation and Order (the "1996 DOS Stipulation"), which required, inter alia, that Clean Venture enclose its putrescible solid waste transfer operations or suspend those transfer operations. See Exhibit "G" to the Complaint.

**EASTERN'S PURCHASE OF THE FACILITY
AND ADDITION AS A RESPONDENT TO THE 1990 CONSENT ORDER**

19. In July 1997, Clean Venture and Eastern initiated discussions with regard to Eastern's purchase of the Facility. Title to the facility was ultimately transferred to Eastern by Clean Venture in September, 1997. Prior to the closing, on August 8, 1997, I met with the then Department Regional Attorney Paul

Gallay, Solid Waste Engineer Anthony Masters, and a summer legal intern to discuss the transfer of the operating authority for the Facility from Clean Venture to Eastern. In addition, we discussed the 1996 DOS Stipulation which, as noted above, required that the putrescible solid waste transfer operation be enclosed within a building. At that meeting, I explicitly advised Messrs. Gallay and Masters that if the operating authority for the facility was transferred to Eastern, Eastern would commence construction of the building to enclose the putrescible waste transfer operation in accordance with the 1996 DOS Stipulation and the 1990 Consent Order. Although the Department had determined that the Application was technically complete in 1995, the Part 360 permit still had not been issued and, in 1997, the Facility continued to be operated pursuant to the 1990 Consent Order. Mr. Gallay seemed shocked that putrescible waste transfer station operations were being conducted outdoors, and Mr. Masters was very supportive of the construction of an enclosure.

20. Subsequent telephone conversations were conducted with Mr. Gallay on or about August 12, 19 and 26, wherein I reiterated that, upon a transfer of authority to operate the Facility to Eastern, Eastern would construct a building pursuant to the terms of the 1996 DOS Stipulation and the 1990 Consent Order. At no time did Mr. Gallay voice an objection to Eastern's plans to construct the building to enclose the putrescible waste operation.

21. Upon this explicit knowledge of Eastern's plans, by

letter dated September 2, 1998, Mr. Gallay provided for the transfer of operating authority from Clean Venture to Eastern, and requested notice of a date by which Eastern would be submitting updated application materials. Annexed to the Complaint as Exhibit "D" is Mr. Gallay's letter approving Eastern as a Respondent and requesting updated Application materials.

22. Thus, upon receipt of the September 2, 1998 letter from Mr. Gallay, I telephoned him to confirm that Eastern could commence construction of the enclosure for the putrescible waste operation. When Mr. Gallay was unavailable, I spoke by telephone with Mr. Masters. In response to my question whether the Gallay letter meant that Eastern could commence construction of the enclosure for the putrescible waste operation Mr. Masters replied "yes."

SUBMISSION OF A REVISED EAS AND APPLICATION

23. On or about November 30, 1997, subsequent to transfer of the Facility title to Eastern, a revised environmental assessment ("EAS") statement was submitted to the DOS. A revised application specifically addressing the new building was then submitted to the Department on or about February 4, 1998. The Department filed technical comments with regard to the application on March 1, 1998 and on April 23, 1998, after the April 20th site visit. Two substantive issues raised in these comments have been the subject of discussions with the agency. The first relates to the set back from the creek. The Department has requested a thirty

(30) foot set-back, even for areas not related to waste storage or handling. As no portion of the site is within a regulated tidal wetland, the Department lacks jurisdiction to so require the set-back for areas not devoted to waste storage.

24. With regard to those areas where waste is stored, the Department uniformly has allowed a ten-foot set-back from the property boundary at other sites. As the property boundary in this instance is the creek, Eastern has offered to build a stronger and higher wall between the waste piles and the creek at the ten-foot set-back.

25. The second substantive issue relates to the application to drain the outdoor portion of the site to the creek after treatment in accordance with a permit applied for under the State Pollution Discharge Elimination System ("SPDES"). The Department has advised us of its preference that the water be drained to the City sewer system. Our professional engineer has advised us that this is not practical as the City's sewage treatment plant is already over capacity, and because the high groundwater at our site will make it virtually impossible to construct the necessary water retention structures. At present, we are anticipating a letter from the New York City Department of Environmental Protection disallowing the drainage of the outdoor portion of the site into the sewer system.

26. The Department will receive a complete response to its incomplete notices by today, May 18, 1998, or no later than

tomorrow, May 19, 1998.

27. The DOS deemed the EAS complete in April of 1998 and thereafter circulated copies of the environmental assessment to potentially interested parties.

DOS ENFORCEMENT ORDER AND CONSTRUCTION OF ENCLOSURE

28. Prior to Eastern's acquisition of the Facility, I also approached the DOS on behalf of Eastern to notify it of Eastern's intent to purchase the Clean Venture Facility and to seek operating authority for Eastern from the DOS. The DOS utilized Eastern's request as an opportunity to renegotiate the terms of the 1996 DOS Stipulation to require Eastern to refrain from processing putrescible waste until a building to enclose the putrescible waste operation was constructed.

29. As a result, on September 5, 1997, the DOS issued to Eastern a solid waste transfer station enforcement order (the "1997 DOS Enforcement Order"), which effectively required Eastern to immediately construct the enclosure and mandated that putrescible waste operations be suspended pending completion of the building. See Exhibit "H" to the Complaint.

30. Importantly, as of April 20, 1998, the DOS confirmed that Eastern "ha[d] complied with all of the terms of the 1997 DOS Enforcement Order." See Exhibit "F" to the Complaint. In addition, the DOS noted that Eastern had stopped processing putrescible waste out-of-doors, had submitted all of the documents necessary to complete the environmental impact assessment process,

and was only two months away from completing the enclosure. Id.

NOTICE OF VIOLATION FROM DEPARTMENT

31. In light of Eastern's compliance with the terms of the 1996 DOS Stipulation and 1997 Enforcement Order, and the enthusiastic and positive response Eastern was receiving from the DOS, I was extremely surprised when it came to my attention that, on or about March 31, 1998, the Department, the DOS's co-lead agency on the project, had issued a notice of violation (the "Notice of Violation") to Eastern for an alleged violation of the 1990 Consent Order for beginning construction of the enclosure for the putrescible waste transfer operation prior to obtaining a Part 360 permit. Annexed to the Complaint as Exhibit "K" is a copy of the notice of violation.

32. What is most perplexing to me is the fact that Eastern had been substituted by the Department on the 1990 Consent Order with the Department's full knowledge that construction on the enclosure would be commenced once title to Eastern had been transferred. Indeed, it was plainly obvious to me that the Department did not expect that Eastern should wait for the issuance of the Part 360 permit prior to commencing construction of the enclosure. Besides the fact that I had confirmed with Mr. Masters that Eastern could commence construction, the reality of the situation was that the Part 360 permit application was deemed complete in 1995 and that the operation of the Facility was deemed not to have a significant impact on the environment. Yet, the

Department still had not issued a permit for the Facility. Rather, it continually chose to allow the Facility to operate under the 1990 Consent Order. In this respect, if Eastern had not been allowed, and in fact encouraged, to commence construction under the 1990 Consent Order and 1997 DOS Enforcement Order, it appears quite possible that many years may have passed before the Part 360 permit would be issued and construction could commence.

33. In response to the March 31, 1998, Notification of Violation, I had numerous telephone conversations with Regional Director Mary Ellen Kris and the Assistant Regional Attorney for the Department during the weeks of April 1 and 6, 1998 concerning the alleged violation for construction of the putrescible waste transfer enclosure. In addition, on April 15, 1998, I met with Senior Deputy Commissioner Gavin Donahue, accompanied by Mr. Robert Donno, Vice-President of Eastern Transfer.

34. Mr. Donno and I also met with Mary Ellen Kris and Department Staff on April 20, 1998 to discuss a resolution of this matter. That afternoon, Ms. Kris and several Staff Members came out to the Facility to inspect. She noted that the Facility was causing no environmental harm and she was duly impressed with the siting of the Facility, which is located next to a scrap yard, an abandoned demolition debris facility, and an oil terminal, and backs up onto the English Kills Barge Canal, directly across from another company's transfer station. Moreover, I noted to Ms. Kris that the enclosure that was under construction was a significant

environmental enhancement in that it included (i) an engineered odor control system, (ii) a system for the capture of all free flowing liquids and a pretreatment facility to pretreat those liquids, and (iii) a poured slab for processing of the Construction and Demolition Debris. After the visit, Ms. Kris only indicated that the 1990 Consent Order might have to be renegotiated to take account of the construction of the enclosure.

35. In subsequent meetings and telephone conversations with Department Staff, the impending expiration of the Consent Order was discussed, and I made clear Eastern's desire for continued operating authority through either a renewal of the Consent Order or the negotiation of a new Consent Order.

36. Accordingly, as usual, prior to the 1990 Consent Order's expiration on May 7, 1998, Eastern made the standard written request for renewal. See Exhibit "J" to the Complaint. Yet, despite a telephone call to the Department on May 8, 1998, I received no response from the Department. Then, on May 11, 1998, I was notified that the Department would not renew the 1990 Consent Order and that Eastern's authority to operate was being summarily terminated.

37. The Department reached the decision to terminate Eastern's authority to operate the Facility without the benefit of an enforcement proceeding or a hearing. This is especially troublesome because neither the Facility nor the construction of the new enclosure constituted a condition likely to result in

irreversible or irreparable damage to natural resources. Rather, the enclosure and concrete pad are protective to the environment.

38. The Department's actions are also troublesome, because they violate the terms of the 1990 Consent Order. In pertinent part, paragraph (v)(A) of the 1990 Consent Order provides:

"New York Carting's failure to comply with any of the terms, conditions and provisions of this Order shall constitute a violation of this Order and of ECL Article 27. All violations shall be adjudicated administratively as provided for by 6 NYCRR Part 622, except violations of paragraphs 15(a), (d) or (a) of the attached Compliance Schedule. The Commissioner may revoke the temporary authority upon a finding of a violation of this Order, such revocation subject to the provisions of 6 NYCRR Part 622."


(emphasis supplied); See Exhibit "B" to the Complaint. Therefore, the Department agreed that they would give Respondent (now Eastern) a hearing before taking action against this Facility. Ironically, the only exception to the hearing process contemplated by the above-quoted language relates to certain aspects of the putrescible waste handling operations, which are currently not operational at the Facility and will be substantially enhanced by the enclosure of that operation in the building that is now 90% complete. The only explanation the Department has offered to why they will not renew Eastern's Consent Order is that Eastern is proceeding with construction without a permit. That alleged violation has nothing to do with paragraphs (a), (d) or (e) of the 1990 Order. Simply put, the Department has offered no justification why they have not

proceeded with a notice and hearing relative to any concerns they have about the Facility.

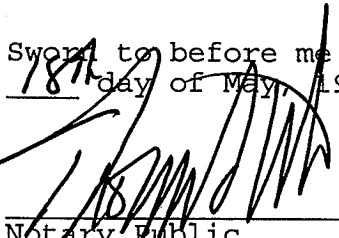
39. As a result of my belief that Eastern was denied proper process, Thomas S. West, Esq., our litigation counsel, wrote to the Department on May 13, 1998 asserting that not only was Eastern denied process under the Department's own regulations, but that under the State Administrative Procedure Act the Department could not summarily terminate Eastern's authority to operate the facility. See Exhibit "L" to the Complaint. We, therefore, requested that Eastern be permitted to resume its C&D operation pending a final determination on the alleged violations. We felt that this request was eminently reasonable in that the C&D operation had nothing to do with the alleged violations. On May 15, 1998, the Department responded by refusing to consider our request. Exhibit "M" to the Complaint. Our response is Exhibit "N" to the Complaint. As this correspondence makes clear, absent relief from this Court, the DEC will treat continued operations as violations, subjecting the operator to criminal and civil sanctions.

WHEREFORE, your deponent prays for judgment preliminarily enjoining the Department from terminating Eastern's authority to operate the Facility pending a final determination of this litigation.

Dated: May 18, 1998


Lawrence R. Schillinger

Sworn to before me this
18th day of May, 1998.


Notary Public

44396

THOMAS S. WEST
Notary Public, State of New York
No. 4953814
Qualified in Albany County
Commission Expires July 31, 99



sanitation

LESLIE ALLAN
Deputy Commissioner
Bureau of Legal Affairs
125 Worth Street, Room 710
New York, New York 10013
Telephone (212) 788-3963
Fax (212) 791-3824

April 20, 1998

Mr. Gavin Donahue
Deputy Commissioner
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12233

Re: Department of Sanitation Enforcement Order for Eastern Environmental
Services Transfer Station at 222 Morgan Avenue in Brooklyn, New York


Dear Mr. Donahue:

I understand that you are interested in the history and status of the Department of Sanitation ("DOS") enforcement order authorizing Eastern Environmental Services ("Eastern Environmental") to operate a transfer station at 222 Morgan Avenue in Brooklyn, New York. The following is a summary of that history and status.

Clean Venture, Inc., d/b/a New York Materials Recycling Co., operated an unenclosed putrescible and non-putrescible solid waste transfer station at the 222 Morgan Avenue site beginning in August 1991 when it acquired the property from New York Carting Co. Clean Venture had a Consent Order from the State DEC authorizing it to handle 5,000 cubic yards of putrescible solid waste and 5,000 cubic yards of non-putrescible solid waste each day, and a Compliance Agreement from DOS. These documents authorized Clean Venture to operate the transfer station while it underwent environmental impact review, which is a precondition for obtaining permits from DOS and DEC. At that time, which was soon after the enactment of Local Law 40 of 1990 and the adoption of DOS operating regulations for non-putrescible solid waste transfer stations, DOS and DEC regularly authorized existing transfer stations to continue operating pending the completion of the lengthy environmental impact review process. (This stance was due in great part to the fact that whenever DOS and DEC tried to close down an existing transfer station, the courts allowed the station to resume operating.)

During the terms of the Consent Order and Compliance Agreement, DOS issued many Notices of Violation ("NOVs") to Clean Venture for excess volume at the site. The

KEEP NYC CLEAN  REDUCE, REUSE, RECYCLE  DON'T LITTER

 printed on recycled paper

Mr. Gavin Donahue
April 20, 1998
page -2-

Environmental Control Board ("ECB"), which adjudicates transfer station NOV's, accepted a settlement of the NOV's which provided for a monthly payout schedule for the penalties. Although Clean Venture has always claimed that the ECB settlement included DOS agreement to an increase in Clean Venture's authorized waste handling volume, I find no documents in the files supporting this claim.

Clean Venture pursued the environmental impact assessment process, which was a precondition to obtaining a DEC permit to construct a building to house the putrescible waste operation, very unenthusiastically. In the Summer or Fall of 1995, DOS indicated that it intended not to renew its Compliance Agreement with Clean Venture, in part because the putrescible waste operation was unenclosed. In response to this threat, Clean Venture commenced an Article 78 proceeding in New York State Supreme Court to compel DOS to continue the authorization to operate, to increase Clean Venture's permissible waste volume to 10,000 cubic yards per day, to refrain from issuing NOV's for excess volume, and to seek dismissal in the ECB of all outstanding NOV's. The court issued a temporary restraining order and preliminary injunction granting the relief requested. The effect of this injunction was to give Clean Venture court authorization to operate, while preventing DOS from closing the transfer station or issuing NOV's for excess volume.

DOS and the New York City Law Department commenced negotiations with Clean Venture to settle the lawsuit. During these negotiations, Clean Venture continued to operate under the authority of the preliminary injunction. In July 1996, DEC modified Clean Venture's Consent Order so as to increase permissible waste volumes to 5,000 cubic yards of C&D debris, 7,500 cubic yards of uncontaminated road building material, and 2,000 cubic yards of putrescible waste. In September 1996, DOS and Clean Venture reached an agreement whereby Clean Venture agreed:

- to pay \$23,000 to the ECB for its outstanding penalties, at a rate of \$6,000 per month;
- to renew and update its permit application and to pay DOS \$40,000 in past permit application fees;
- to process no more than 2,000 cubic yards per day of putrescible waste;
- to process no more than 5,000 cubic yards of construction and demolition debris every two days;
- to store no more than 7,500 cubic yards of clean fill at the site;
- to enclose the putrescible waste operation by July 31, 1997; and
- to complete its environmental impact review process by July 31, 1997.

Mr. Gavin Donahue
April 20, 1998
page -3-

(The increased waste volumes conformed to those that DEC had already agreed to in July.)

The New York City Law Department embodied that agreement in a Stipulation and Order signed on December 2, 1996 and filed with the New York County Clerk on December 24, 1996. The Stipulation benefitted DOS because it lifted the court order which tied our hands with respect to enforcing our regulations against Clean Venture and it established that Clean Venture would enclose its putrescible waste operation, which was the highest priority for us. At the time, Clean Venture was the only unenclosed putrescible waste transfer station in the City.

Clean Venture operated in compliance with the terms of the Stipulation. Then, in July 1997, Eastern Environmental began negotiations to purchase Clean Venture's assets. The New York City Trade Waste Commission favored this purchase, because it would bring a new, responsible corporate entity into the New York waste market. As a condition of the purchase, Eastern Environmental needed assurance that it could assume Clean Venture's operating authority for 222 Morgan Avenue.

While DEC simply transferred its Consent Order from Clean Venture to Eastern Environmental, DOS, with input from the Trade Waste Commission, instead negotiated an agreement with stricter terms. Like the December 1996 Stipulation and Order, the DOS agreement with Eastern Environmental required the construction of a building to house the putrescible waste operation. Unlike that Stipulation, however, the DOS agreement prohibited the continuance of unenclosed putrescible waste handling pending the construction of the building. Only when the building was complete could Eastern Environmental process the 2,000 cubic yards of putrescible waste allowed by the Stipulation and Order. The agreement was embodied in an Enforcement Order, a copy of which is attached.

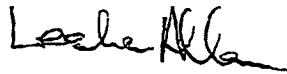
Eastern Environmental has complied with all of the terms of the Enforcement Order. It stopped processing putrescible waste out-of-doors; it has submitted all of the documents necessary to complete the environmental impact assessment process; and it expects to complete construction of the putrescible waste handling building in the next two months. If it succeeds in this last task, it may be awarded a contract to export part of the City's residential waste, as it was the low bidder on the Brooklyn-Queens Waste Export Bid Solicitation which DOS issued in September 1997.

Mr. Gavin Donahue
April 20, 1998
page -4-

DOS considers this outcome a success. Clean Venture was operating for years under authority of DEC Consent Orders, DOS compliance agreements, preliminary injunctions, and court orders, all of which allowed it to process 2,000 cubic yards per day of putrescible waste out-of-doors. In contrast, Eastern Environmental is operating under authority of a DOS Enforcement Order which eliminated the unenclosed putrescible waste operation. Rather than allowing Eastern Environmental to continue the unenclosed putrescible waste handling operation while it completes the DEC and DOS permit process and then constructs a building, DOS mandated the cessation of that operation. This result is unquestionably an improvement for the environment and community.

I hope that this summary informs and assists you. If you have any questions, please feel free to call me.

Sincerely,



Leslie Allan

cc: J. Doherty
M. Carpinello
M.B. Kris

New York State Department of Environmental Conservation
Office of the Regional Attorney
Region 2
47-40 21st Street, Long Island City, N.Y. 11101
Tel: 718/482-4965 Fax: 718/482-4962

JUN 17 1998



John P. Cahill
Commissioner

June 11, 1998

Helene Goldberger
Administrative Law Judge
New York State Department
of Environmental Conservation
Office of Hearings and
Mediation Services
50 Wolf Road
Albany, NY 12233-1550

Re: Eastern Transfer of New York
File No. R2-0399-98-03

Your Honor:

This is in response to your letter dated May 20, 1998 requesting the parties to the above-referenced action provide you with any court orders which have bearing on the present action. Enclosed herewith please find a set of the Department's papers submitted in the Supreme Court as well as a copy of the Order by Justice Thomas J. Keegan dated May 29, 1998 that lifted the TRO and reserved judgement on DEC's cross motion for a TRO prohibiting Eastern's continued operation.

In addition, we wish to note that Eastern's submission to you of its Memorandum of Law, Mr. West's Affirmation, and other documents filed in the Supreme Court action are replete with references to the Affidavit of Norman Nosenchuck which Eastern also submitted in the Supreme Court. As Mr. West acknowledged in his submission to you, consideration of Mr. Nosenchuck's Affidavit would not be proper in the DEC administrative proceeding because of the Ethics Law restrictions. Submission of documents which reference and quote from Mr. Nosenchuck's Affidavit is equally troublesome.

Please do not hesitate to call me if you have any questions.

Respectfully submitted,

Laurie Silberfeld

cc: Thomas West, Esq. (w/o attachments)
Maureen Leary, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

- - - - - x
EASTERN TRANSFER OF NEW YORK, INC.)

Plaintiff-Petitioner,)

-against-)

NEW YORK STATE DEPARTMENT OF)
ENVIRONMENTAL CONSERVATION)

Defendant-Respondent.)
- - - - - x

AFFIDAVIT IN SUPPORT
OF MOTION FOR
PRELIMINARY
INJUNCTION

INDEX NO: 2755-98
Hon.

STATE OF NEW YORK)
COUNTY OF KINGS) SS:

ROBERT DONNO, being sworn, deposes and says:

1. I am a Vice President of Plaintiff-Petitioner, Eastern Transfer of New York, Inc. (hereinafter "Eastern" or "Plaintiff"). I make this affidavit in support of a motion for preliminary injunction and in support of a related application for a temporary restraining order.

2. I am responsible for the operation of the facility located at 222 Morgan Avenue, Brooklyn, New York, 11237 (the "Facility"). By reason of summary action by the New York State Department of Environmental Conservation (the "Department" or "DEC"), the Department has suspended our authority to operate without justification and without any notice or an opportunity for a hearing.

3. The summary suspension of our operation will cause serious, immediate and irreparable harm to Eastern. Eastern has an on-going relationship with numerous waste haulers who regularly haul construction and demolition debris to our facility. If we are forced to shut our doors, even temporarily, these waste haulers will seek other outlets for their waste, meaning that we will likely lose them as customers forever. In addition, we are currently in negotiation with several companies relative to contracts for the transfer of putrescible waste. If we are not able to resume the processing of putrescible waste when our building is complete, we will loose those contracts as well. This loss of market share will be impossible to recoup in the short run and may take many years after we restore the operation to service.

4. In addition, Eastern is the low bidder on a contract bid with the City of New York to export a portion of the solid waste generated within the Borough of Brooklyn. Our right to be awarded this contract depends entirely on our ability to operate the Facility and handle putrescible waste at the Facility. Eastern's bid is about \$8.85 per ton less than the next qualified bidder, and will save the City of New York almost \$3 million per year, over the life of the contract. Over the life of the contract, this will save the City more than \$9 million.

5. Both the Complaint and Mr. Schillinger's Affidavit detail the long and involved history of the Facility. Suffice it to say, since we took over operation of the Facility, we have done everything possible to upgrade the Facility in accordance with the

mandate of the regulatory agencies and to complete the long overdue permit application process. For the past ten years, the predecessor operator of this Facility had been transferring solid waste in the open air with no environmental controls at all, during which period the DEC consistently renewed that company's Order on Consent, without objection. Inexplicably, the DEC has now reversed its position, even though we are doing everything possible to improve the site and operation of the Facility.

6. Specifically, we have entered into contracts for the expedited construction of a state-of-the-art, 37,000 square foot putrescible handling facility to enclose the putrescible waste handling operations. This building meets or exceeds both DOS and DEC requirements. The putrescible waste building will include an engineered odor control system as well as systems to manage leachate. The fact that the system will be enclosed indoors is a significant factor in preventing the generation of contaminated runoff, which is one of the reasons why both the New York City Department of Sanitation (the "DOS") and the Department require that putrescible waste handling be conducted in an enclosed facility. This building is being constructed under a building permit issued by the New York City Department of Business Services in or about October of 1997. Today, building construction is approximately 90% complete, including substantial completion of the building, the paving, the odor control system, the scales, the load extruder, and the leachate control system. These construction

activities have been inspected by representatives from the DOS regularly.

7. Numerous other improvements have been made to the Facility. Those improvements include the construction of a concrete pad for the handling of Construction and Demolition Debris to avoid soil and groundwater contamination, numerous repairs to fencing and the like, and other general upgrades of the Facility to improve the environmental quality of the operation.

8. To date, we have invested more than \$10 million dollars in acquisition of the Facility and more than \$5 million dollars in upgrades to the Facility, including our contractual commitments to complete construction of the building to enclose the putrescible waste handling operations. If building construction is halted, we will incur substantial penalties with our construction contractors and, as is noted above, loose contracts for waste disposal that are under negotiation.


9. Consistent with our effort to complete the permit application process, we have also filed a detailed environmental assessment with both the DOS and the Department. The environmental assessment includes studies of air, traffic noise, archeological and other impacts. Following a normal process of comments and revisions, that document has been accepted as complete and circulated for public comment.

10. We have also submitted to the Department revisions to the long outstanding permit application for this Facility to reflect the construction of the putrescible waste handling

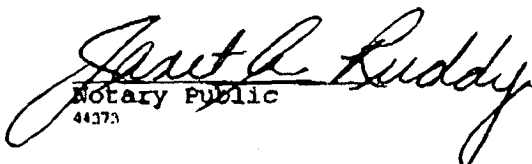
building. The Department has issued minor, technical comments and we are in the process of responding to those comments. We anticipate filing responses to those comments with the Department in the very near future, perhaps as early as today or tomorrow.

11. In short, we feel that we have done everything that we can to upgrade this Facility to improve the environmental quality of the Facility, and to process the permit applications for this Facility.

12. Injunctive relief is imperative to allow us to maintain our customer base while we complete the long overdue permit process.


ROBERT DONNO

Sworn to before me
this 18 day of
May, 1998


Notary Public
44373

JANET A. RUDDY
Notary Public, State of New York
No. 01804739853
Qualified in Nassau County
Commission Expires Sept. 30, 1998

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

- - - - -	x	
EASTERN TRANSFER OF NEW YORK, INC.)	
)	SUMMONS
Plaintiff-Petitioner,)	
)	INDEX NO: <u>2755-98</u>
-against-)	
)	Hon.
NEW YORK STATE DEPARTMENT OF)	
ENVIRONMENTAL CONSERVATION)	
)	
Defendant-Respondent.)	
- - - - -	x	

TO THE ABOVE-NAME DEFENDANT:

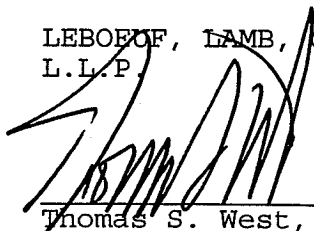
You are hereby summoned and required to serve upon Plaintiff-Petitioners' attorneys an Answer to the Combined Verified Petition and Complaint in this action within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York).

In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Petitioners designate Albany County as the place of venue pursuant to § 506(b) of the Civil Practice Law and Rules of the State of New York because Defendant-Respondent maintains its principal office in Albany County.

DATED: Albany, New York
May 18, 1998

LEBOEUF, LAMB, GREENE & MACRAE
L.L.P.



Thomas S. West, Esq.
Attorneys for Plaintiff-
Petitioner
99 Washington Avenue
One Commerce Plaza
Suite 2020
Albany, New York 12210-2820
(518) 465-1500

At an ex parte motion term of the Supreme Court of the State of New York, held in and for the County of Albany, at the Albany County Courthouse on the 18th day of May, 1998.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

----- x
EASTERN TRANSFER OF NEW YORK, INC.)
)
Plaintiff-Petitioner,)
)
-against-)
)
NEW YORK STATE DEPARTMENT OF)
ENVIRONMENTAL CONSERVATION)
)
Defendant-Respondent.)
----- x

ORDER TO SHOW CAUSE
ON MOTION FOR
PRELIMINARY
INJUNCTION WITH
TEMPORARY
RESTRAINING ORDER

INDEX NO: 2785-98

Hon.

On reading and filing the Summons and Verified Petition and Complaint, verified on the 18th day of May, 1988; the Affidavit of Lawrence R. Schillinger, Esq., sworn to May 18, 1998; the Affidavit of Robert Donno, sworn to on May 18, 1998; and all exhibits annexed thereto, and proof of service of this application for relief, and the supporting papers upon which it is based upon the New York Attorney General;

LET Defendant-Respondent New York State Department of Environmental Conservation (the "Department" or "DEC") or their attorneys show cause before a Term of this Court on the 29th day of May, 1998, to be held in and for the County of Albany at the Albany County Courthouse in Albany, New York, at 9:30 in the forenoon of that day or as soon thereafter as counsel can be heard,

ALBANY COUNTY
CLERK OF COURT
1998 MAY 18 PM 12:28
ALBANY, N.Y.

why a preliminary injunction should not be granted herein, pursuant to Section 6301 of the Civil Practice Law and Rules ("CPLR"), restraining the Department from taking any action inconsistent with Plaintiff-Petitioner's rights to continued operation of the Facility owned and operated by Plaintiff-Petitioner at 222 Morgan Avenue, Brooklyn, New York (the "Facility") under the State Administrative Procedure Act § 401 and authorizing the continued operation of the Facility, on the grounds that (1) Plaintiff-Petitioner has continuing rights to operate under the terms of a 1990 Order on Consent issued by the Department; (2) the effort by the Department to terminate Plaintiff-Petitioner's rights to operate under the 1990 Order on Consent violate Plaintiff-Petitioner's rights to continue operating pursuant to State Administrative Procedure Act § 401 and Plaintiff-Petitioner's vested legal rights to operate; (3) the Department has not followed proper procedure to terminate Plaintiff-Petitioners' operating rights; and (4) immediate and irreparable injury, loss or damage will result to Plaintiff-Petitioner if the Department is not so restrained.

It appearing that a cause of action exists for injunctive relief under Sections 6301 and 7805 of the CPLR and for declaratory relief under the State Administrative Procedure Act § 401, and that the Department's illegal interference with Plaintiff-Petitioner's continuing rights to operate the Facility will result in immediate and irreparable injury, loss or damage to

Plaintiff-Petitioner and its property, and the value of said property, before a notice can be served and a hearing had, it is

ORDERED, that pending the hearing of this motion,

Plaintiff-Petitioner shall have continuing rights to operate

Regarding Construction and Demolition Debris only
X ~~pursuant to State Administrative Procedure Act § 401,~~ and the

Tuk Department is stayed and enjoined and restrained from taking any steps or actions to interfere with those operating rights,

including the ongoing construction of the building to enclose the

Tuk putrescible waste handling operation; *Provided, however, that nothing*

shall prevent DEC from pursuing administrative remedies
Memo to NUCER Path 622; ORDERED, that service of this order and the papers upon

which it is based, be made by serving copies of said papers, upon

the Department and the New York State Attorney General on or before

the 18 day of May, 1998; and it is further

ORDERED, that responsive papers, if any, shall be filed and served on or before May 27, 1998; and it is further

ORDERED, that, on or before the return date of this motion, the Department shall make available to Plaintiff-Petitioner copies of its files relating to the Facility for inspection and copying.

DATED: Albany, New York
May 18, 1998

Enter,

Thomas J. Keegan
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

----- X
EASTERN TRANSFER OF NEW YORK, INC.)

Plaintiff-Petitioner,)

-against-)

NEW YORK STATE DEPARTMENT OF)
ENVIRONMENTAL CONSERVATION)

Defendant-Respondent.)
----- X

NOTICE OF
APPLICATION FOR A
TEMPORARY
RESTRAINING ORDER

INDEX NO:


2755-98

Hon.

PLEASE TAKE NOTICE that upon the (1) Proposed Order to Show Cause; the Summons and Combined Verified Petition and Complaint, verified on the 18th day of May, the Affidavit of Lawrence R. Schillinger, dated May 18, 1998, the Affidavit of Robert Donno, dated May 18, 1998, and Plaintiff-Petitioner's Memorandum of Law, dated May 18, 1998, an application will be made to Albany County Supreme Court for a temporary restraining order and the other relief set forth in the Proposed Order to Show Cause.

DATED: Albany, New York
May 18, 1998

Respectfully Submitted,



Thomas S. West, Esq.
LeBoeuf, Lamb, Greene &
MacRae, L.L.P.
One Commerce Plaza
Suite 2020
99 Washington Avenue
Albany, New York 12210
Tel: (518) 465-1500

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

----- X
EASTERN TRANSFER OF NEW YORK, INC.)
)
Plaintiff-Petitioner,)
)
)
-against-)
)
NEW YORK STATE DEPARTMENT OF)
ENVIRONMENTAL CONSERVATION)
)
Defendant-Respondent.)
----- X

AFFIDAVIT OF SERVICE

INDEX NO: 2755-98

Hon.

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)


THOMAS S. WEST, being duly sworn, deposes and says:

1. I am over the age of eighteen (18) years, not a party to this action, and an attorney with the law firm of LeBoeuf, Lamb, Greene & MacRae, L.L.P., One Commerce Plaza, 99 Washington Avenue, Suite 2020, Albany, New York 12210, counsel to Plaintiff-Petitioner.

2. On May 18, 1998, I personally served the the New York State Attorney General, located at the Department of Law, The Capitol, Albany, 12224, on behalf of the Defendant-Respondent with true and correct copies of the following documents:

1. Proposed Order to Show Cause;
2. Summons and Combined Verified Petition and Complaint, dated May 18, 1998;

3. Affidavit of Lawrence R. Schillinger, dated May 18, 1998;
4. Affidavit of Robert Donno, dated May 18, 1998; and
5. Plaintiff-Petitioner's Memorandum of Law, dated May 18, 1998.



THOMAS S. WEST

Sworn to before me this
18th day of May, 1998.



Notary Public

44410

ANDREA M. CARPENTER
Notary Public, State of New York
Qualified in Albany County
No. 01CA5051440
Commission Expires Nov. 6, 1999

SIVE, PAGET & RIESEL, P.C.

460 PARK AVENUE

NEW YORK, NEW YORK 10022-1906

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MICHAEL S. BOGIN
ANDREW J. GERSHON**
KAREN LEO
VINITA K. MENDIRATTA*
JAMES R. NORMAN*
STEVEN RUSSO
DAVID S. YUDELSON

* ALSO ADMITTED IN N.J.

** ALSO ADMITTED IN CT.

STEVEN BARSHOV
PAUL D. CASOWITZ*
WILLIAM R. GINSBERG
ARTHUR J. JACOBSON
STEPHEN R. LEVY
COUNSEL

81 MAIN STREET - SUITE 415
WHITE PLAINS, N.Y. 10601
TELEPHONE: (914) 682-3944
FACSIMILE: (914) 683-5490

August 7, 1997

BY HAND

Mr. Thomas Milora
Director Permit & Inspection Unit
New York City Department of Sanitation
137 Centre Street, Room 104
New York, N.Y.

Re: Eastern Transfer of New York, Inc.

Dear Tom:

Please find enclosed two copies of the application that has been prepared on behalf of my client Eastern Transfer of New York, Inc. in connection with its acquisition of the Clean Venture transfer station at 222 Morgan Avenue, Brooklyn, N.Y. All of the principals of Eastern Transfer of New York are each a Principal of Eastern Waste of New York (Eastern Waste) an affiliated company licensed by the Trade Waste Commission (TWC) to collect waste in the City of New York. The Principals of Eastern Transfer are Louis D. Paolino, Jr., President, Terry Patrick, Vice President, Robert Kramer, Secretary Vice President, Gregory Krzemien, Treasurer, Robert Donno, General Manager.

Although the application is substantially complete, there are some missing items:

- Tax ID (Applied For)
- Employees -- Schedule D (Not Selected Yet)
- Trade Waste Business Acquired By Principal After August 1996 -- Schedule C1.

I will also need some additional time to have each Principal execute the "certification" and "release". Please note that each Principal has previously submitted a disclosure to the TWC and executed similar "certifications" and "release" in connection with Eastern Waste's TWC license.

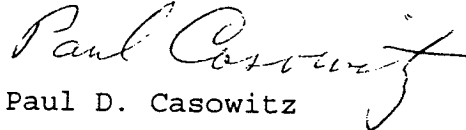
SIVE, PAGET & RIESEL, P.C.

August 7, 1997
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I respectfully request that this application be accepted for the purpose of the Compliance Order that the applicant intends to enter into with the Department as a condition of its closing on the property.

I affirm as an attorney admitted to practice in the courts of the State of New York, that all of the representations in this letter and the enclosed application are accurate and complete to my best knowledge. A complete application will be timely submitted to your office.

Very truly yours,



Paul D. Casowitz

cc: Leslie Allen, Esq. (w/o enc.)
Deputy Commissioner (w/o enc.)
Robert Kramer, Esq. (w/o enc.)

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**NEW YORK CITY
DEPARTMENT OF SANITATION
PERMIT AND INSPECTION UNIT
137 CENTRE STREET, ROOM 104
NEW YORK, NEW YORK 10013**

TRANSFER STATION PERMIT APPLICATION

-----OFFICE USE ONLY-----

APPLICATION #:
RECOMMENDED:
REJECTED: DATE:
DOS PERMIT #:

DATE RECEIVED:
DATE: INITIALS:
INITIALS:
DATE ISSUED:

GENERAL INSTRUCTIONS

Duplicate original applications (i.e. completed applications with original signatures) must be filed with the Department of Sanitation, Permit and Inspection Unit, 137 Centre Street, New York, New York 10013, and the New York City Trade Waste Commission, 253 Broadway, 10th Floor, New York, New York 10007.

Information from all "principals" is required. Please review the definition of "principal" contained in Appendix A. Each principal must separately swear to the truth of the information by completing a separate Certification Form. In addition, each principal must execute a Release Authorization. (Copy the Certification Form and Release Authorization as necessary to cover all principals.) Please review other definitions provided in Appendix A as well prior to completing this application.

Information requested in questions marked with an asterisk must be updated within 30 days of any change. Updated information should be filed with the Department of Sanitation and the Trade Waste Commission at the above-noted addresses.

Call the Department of Sanitation, Permit and Inspection Unit, at (212)219-5042 if you have any questions regarding Sections A and B of the Application. Call the New York City Trade Waste Commission at (212)676-6300 if you have any questions regarding Section C of the Application.

Tax ID or SSN: Applied for

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SECTION A: APPLICANT AND SITE IDENTIFICATION INFORMATION

* 1. Indicate the name of the applicant business and the address, phone number and block and lot number of the proposed transfer station. Also list any trade name(s) and permit name(s) if they are different from the name of the applicant business.

a. Applicant Business Name: *Eastern Transfer of New York, Inc.*

Transfer Station Address: *222 Morgan Avenue
Brooklyn, New York 11237*

Phone #: *(718) 497-3100*

Block #: *2942* Lot #: *1, part of 7*

b. Trade Name(s): *N/A*

c. DOS Permit Name(s): *Eastern Transfer of New York, Inc.*

d. DOS Permit Number(s): *Transfer Station #148*

e. DEC Permit Name(s): *Eastern Transfer of New York, Inc.*

f. DEC Permit Number(s): *Application #2-6104-00097/00001-0
Consent Order R2-2631-8910*

g. Are there any other facilities permitted under this name? ☒ No ☐ Yes

h. If "yes," where are they located? *N/A*

2. Check the type of transfer station permit you are applying for.

() Putrescible

(☒) Non-Putrescible

() Fill Material

3. Indicate name, address and phone number of principal office of business, if different from proposed site.

Eastern Environmental Services, Inc.

1000 Crawford Place

Suite 101

Mt. Laurel, NJ 08054 (609) 235-6009

Tax ID or SSN: Applied for

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4. Provide the name and phone number of an authorized agent and his/her address in New York City where warnings, notices of violations, orders and other documents addressed to the applicant or permittee may be served.

Name: *Louis D'Ambrosio*
Address: *222 Morgan Avenue*
Brooklyn, New York 11237
Phone #: *(718) 497-3100*

5. Name, address and phone number of owner of land on which facility is located:

Eastern Environmental Services, Inc.
1000 Crawford Place
Suite 101
Mt. Laurel, NJ 08054
(609)235-6009

6. If owner of land is not applicant business, describe terms under which land is used.
N/A

7. Name, address and phone number of all lessees utilizing the proposed site location.

N/A

8. What type of business entity is the applicant representing?:

- a. Corporation *X*
- b. Partnership
- c. Sole Proprietorship
- d. Limited Liability Company
- e. Limited Liability Partnership

9. If a Corporation, provide the following information

Name : *Eastern Transfer of New York, Inc.*
Address: *1000 Crawford Place*
Suite 101
Mt. Laurel, NJ 08054

Tax ID or SSN: Applied for

Phone : (609) 235-6009
Federal Employer Identification #: *Applied for*

10. What is the zoning for the proposed site location? *M3-1*

11. Indicate the name(s) of the street(s) bordering the proposed site location.

North: *325' to Grand Street*
South: *1,200' to Johnson Avenue*
East: *N/A*
West: *Morgan Avenue*

12. Indicate the distance from the proposed site to the closest residential zone.

Distance: *1,000' to R6*

13. Indicate the street boundaries of the residential area(s).

North: *Norman Avenue*
South: *Flushing Avenue*
East: *Waterbury Street*
West: *Union Avenue*

14. What is the square footage of the property? *180,095 square feet*

15. What is the length and width, in feet, of the proposed site location?

Length: *489'* Width: *382.5'*

SECTION B: OPERATIONAL INFORMATION

16. What is the length and width of the
Tipping/Processing area: *100 x 100*

Storage area: *100 x 100*

Loading area:

17. What are your intended operating days and hours?

Tax ID or SSN: *Applied for*

FROM:

TO:

Monday: 24 hours
 Tuesday: 24 hours
 Wednesday: 24 hours
 Thursday: 24 hours
 Friday: 24 hours
 Saturday: 24 hours
 Sunday: closed at 2 PM

18. What is the anticipated volume of solid waste (tons and yards) that will be processed at your facility on a daily basis? Renewal applicants shall list what is currently processed.

Tons: 1000
 Yards: 2000

19. Does the facility have a certified operating scale? Y X N ____

20. Provide the name and address of the anticipated final disposition site(s) for putrescible and non-putrescible debris processed at the transfer station:
 (Non-putrescible disposal facilities provided below)

Name and Addresses:

a. 110 Sand Company 170 Cabot Street West Babylon, NY 11704

b.

c.

21. Provide the daily, weekly and monthly number of vehicle arrivals and departures at the transfer station site.

	Vehicle Arrivals		Vehicle Departures	
	Present	Projected	Present	Projected
a. Daily:	95	95	95	95
b. Weekly:	523	523	523	523
c. Monthly:	2,090	2,090	2,090	2,090

Tax ID or SSN: Applied for

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(Traffic figures provided for non-putrescible operations only. Projected figures are based on maximum 2000 CYD throughput proposed))

22. Describe the type of recycling equipment to be used at the transfer station.

See equipment/machinery list attached

23. How does applicant intend to control fire hazards and dust?

Describe: Fire hazards in the outdoor portions of the site are controlled by maintaining adequate access to City hydrants, on-site hosebibs, a "No Smoking Policy", as well as an adequate supply of sand, metal buckets and portable extinguishers. Indoor areas are sprinklered and equipped with portable fire extinguishers.

Dust is controlled by hosing down of transfer vehicles and paved surfaces, sweeping, opaque fencing, and by keeping facility gates closed when not being accessed. Also, all transfer vehicles are tarped/enclosed.

24. How does applicant intend to control leachate?

Describe: All runoff generated in the outdoor waste handling areas will be directed to on-site drains and a wastewater treatment system prior to discharging to the Newtown Creek. A SPDES permit will be applied for and obtained to authorize such discharge.

25. Is there a 1/2 inch water main and hose at the proposed site? *Yes*

Tax ID or SSN: Applied for

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SECTION C: BACKGROUND INFORMATION

26. List any past names of applicant business (including but not limited to trade names, d/b/a's, and aliases) for the past 10 years; if none, state "none". For each name list business addresses:

Name and address	From (year)	To (year)
NONE		

*27. On Schedule A, identify all individuals/entities who are or have been principals of applicant business at any point during the past ten years. (For these purposes "principal" is defined in Local Law 42 § 16-501(d), a copy of which is appended hereto as Appendix A.) For each individual, provide full name (where applicable, include maiden name), home address, telephone number(s) (including cellular, fax and beeper numbers, where applicable), date of birth, social security number, dates of association with the applicant business, job title and/or function within the applicant business's organization, the percentage of ownership, if applicable, and an explanation of how their ownership was acquired (e.g. purchase and purchase price; inheritance etc.).

*28. On Schedule B, identify all individuals, not already identified in answer to question 27 who have or have had a beneficial interest in the applicant business at any point during the past ten years. For each individual, provide full name (include maiden name where applicable), home address and telephone number(s) (include cellular, fax and beeper numbers, where applicable), date of birth, social security number, dates of association with the applicant business (if any), job title and/or function within the applicant's organization (if any), the nature and percentage of the beneficial interest, and an explanation of how their beneficial interest was acquired (e.g. purchase and purchase price; inheritance, etc.)

Tax ID or SSN: _____

*29. Does/did the applicant business operate any other transfer station and/or private carting or trade waste business in New York State, New Jersey or Connecticut, currently or within the past 10 years? X No Yes

a. Name under which business(es) is/are operated.

b. DOS and DEC permit number(s) or DCA license number(s) (where applicable):

*30. Does the applicant business accept asbestos, regulated medical waste or other hazardous materials? X No Yes

a. If "yes," indicate the name and address of the business at which such material(s) are accepted.

*31. Does the applicant business share any office space, staff or equipment (including but not limited to telephone lines) with any other business or organization? No X Yes

If "yes" provide details below, including what is shared, under what terms, and the name(s) of the entity(ies) or individual(s) with whom it is shared.

Eastern Environmental (Parent)

Eastern Waste of New York (Affiliate)

*32. Currently, or at any point during the past ten years, has the applicant business or any principal of the applicant business been a principal or held an equity interest in any business concern that collects, transfers, treats, stores, recycles, processes or disposes of

(a) trade waste, as defined in Appendix A; or

(b) hazardous waste, as defined in section 27-0901 of the Environmental Conservation Law? Include any and all such business concerns, including transfer stations and carting companies located in any state, territory or district of the United States, or in any foreign country, but do not include stock ownership in publicly traded corporations unless it amounts to more than 5% of said corporation. No X Yes

Tax ID or SSN: _____

If "yes" complete the information required on Schedule C or Schedule C(1) as applicable.

*33. How many individuals (not including principals of the applicant business) does the applicant business currently employ? _____

*34. List the names, residence addresses, phone numbers, dates of birth, positions, planned work hours per day and social security numbers of all employees applicant business presently believes will be employed by the applicant business in its business on Schedule D.

*35. During the past ten years, has the applicant business or any current or past principal of the applicant business been convicted of any misdemeanor or felony in any jurisdiction?

 X No Yes

If "yes," provide details below. Do not include information relating exclusively to traffic violations.

PRINCIPAL OR BUSINESS NAME	DATE OF ARREST	DATE OF CONVICTION	CONVICTION CHARGE(S) & SENTENCE	COURT & JURISDICTION	INDICTMENT, DOCKET OR INDEX NO.

Tax ID or SSN: _____

*36. Are there any felony or misdemeanor charges pending against the applicant business or any current or past principal (within the last 10 years) of the applicant business in any jurisdiction?

☒ No ☐ Yes

If "yes," provide details below. Do not include information relating exclusively to traffic violations.

PRINCIPAL OR BUSINESS NAME	DATE OF ARREST	CHARGE	INDICTMENT INDEX OR DOCKET NO.	STATUS	COURT & JURISDICTION

37. During the past ten years, has the applicant business or any current or past principal of the applicant business been found in violation of the administrative rules or regulations of any municipal, state or federal agency where the violation related to activities of the applicant business and resulted in suspension or revocation of any license, permit or registration, the imposition of a fine of \$5,000 or more or the imposition of an injunction of six months or more?

☒ No ☐ Yes

If "yes," provide details in Schedule E.

Tax ID or SSN: _____

38. Are there any administrative charges by any municipal, state or federal agency, presently pending against the applicant business or any current or past principal (within last 10 years) of the applicant business where the applicant or the principal faces the possible sanction of suspension or revocation of any license, permit or registration or where a fine of \$5,000 or more or an injunction of six months or more could be imposed?

☒ No ☐ Yes

If "yes," provide details on Schedule F.

*39. During the past five years, has the applicant business or any current or past principal of the applicant business:

a. received a subpoena or been asked to testify before any court, grand jury, or legislative, civil, criminal or administrative body involving any matter related to the trade waste industry (including but not limited to private carting companies, transfer stations, trucking (backhauling) companies, landfills, incinerators, recycling facilities)? ☒ No ☐ Yes

b. received a subpoena requiring the production of documents in connection with a federal, state or local investigation related to the trade waste industry? ☒ No ☐ Yes

c. been cited for contempt of any court, grand jury, or legislative, civil, criminal or administrative body? ☒ No ☐ Yes

d. entered a plea of nolo contendere to any felony or misdemeanor charge? ☒ No ☐ Yes

e. entered into a judicial consent decree, administrative order on consent or similar agreement or been the subject of a default decree, related to the trade waste industry not already noted in answer to questions 37 or 38? ☒ No ☐ Yes

f. been subject to an injunction in any judicial action or proceeding with respect to the trade waste industry ☒ No ☐ Yes

g. been granted immunity from prosecution for any conduct constituting a crime under state or federal law? ☒ No ☐ Yes

h. had judgment entered against him/her/it as a result of a civil action related to the conduct of a trade waste business? ☒ No ☐ Yes

If the answer to any portion of question 39 is "yes," provide details in Schedule G.

Tax ID or SSN: _____

40. Has the applicant business or any of its current or past principals (within last 10 years):

a. filed with a government agency or submitted to a government employee a written instrument which the applicant or any of its principals knew contained a false statement or false information? X No ___ Yes

b. given, or offered to give, money or any other benefit to a public servant with intent to influence that public servant with respect to any of his or her official acts, duties or decisions?

X No ___ Yes

c. agreed with another trade waste business not to compete in the conduct and furnishing of a trade waste service? X No ___ Yes

d. agreed with another trade waste business to divide or allocate customers or to respect an existing division or allocation of customers by geography, territory or otherwise?

X No ___ Yes

e. discussed with another trade waste business the prices or terms to be submitted to bid on a contract for trade waste services including collection, processing or disposal of trade waste?

X No ___ Yes

f. discussed with a competitor the prices or terms to be submitted to bid on any contract with New York City, any of its agencies, authorities or subdivisions, or any other governmental entity?

X No ___ Yes

41. If the answer is "yes" to any portion of question 40, provide the following information, on separate sheets as necessary, as to the applicant business and as to each relevant current or past principal of the applicant business, for each relevant incident:

a. Number, letter of question. _____

b. Who from the applicant was involved?

Tax ID or SSN: _____

c. Describe the relevant activities.

d. Who else, not from the applicant, was involved, what is their affiliation and what did they do?

e. When did this happen?

f. If applicable, what was the governmental agency, or trade waste business involved?

g. If applicable, describe the benefit given. If the benefit was money, how much was involved and how was it paid?

h. Reason for engaging in the practice.

Tax ID or SSN: _____

*42. Has the applicant business or any predecessor trade waste business been subject to forfeiture, receivership or independent monitoring in the past ten years?

☒ No ☐ Yes

If "yes," attach a copy of agreement or documentation and provide the parties, dates, judicial body and court decision below.

43. Have the applicant business and all principals of the applicant business filed all required tax returns related to the applicant business (including but not limited to, income and business, unincorporated business, sales, commercial rent, property taxes on New York City realty and unemployment insurance returns) by the due date or within a properly obtained extension period for each of the past three years?

☐ No ☒ Yes

If "no," provide the following information on separate sheets as necessary, identifying the relevant applicant business or principal of the applicant business:

a. The year(s) in which the Applicant business or principal thereof did not file by the due date or with a properly obtained extension, the type of return involved, and, where applicable, whether the delayed filing relates to Federal, New York State or New York City tax returns.

b. Business address during the year(s) in question;

c. The date(s) when late return(s) were filed;

d. The reason(s) for the late or non-filing;

Tax ID or SSN: _____

e. Any penalty assessed for the year(s) in question;

44. Have the applicant business and all principals of the applicant business paid all required taxes related to the applicant business (including but not limited to, income and business, unincorporated business, sales, commercial rent, property taxes on New York City realty and unemployment insurance returns) for the three tax years preceding the date this application is submitted? ☐ No ☒ Yes

If "no," explain why not. (If Applicant business or principal thereof is contesting such taxes in a pending judicial or administrative proceeding, attach the relevant documentation.)

45. List on Schedule H any tax liens entered against the applicant business by any tax authority. If none, state "none." NONE

46. List on Schedule I any monies currently owed by applicant business to tax authorities, other than those tax debts for which liens have been entered against the applicant business or principal of the applicant business, already listed on Schedule H in answer to question 45. Indicate the status of the matter (i.e., the date by which the relevant party will make payment, whether the tax authorities have instituted proceedings against the applicant, etc.) If none, state "none."

NONE

47. During the past ten years, has the applicant business, any predecessor trade waste business or any predecessor in interest, or any principal of the applicant business, been a debtor in a bankruptcy (other than personal bankruptcy) or reorganization proceeding? ☒ No ☐ Yes

If "yes," provide details on Schedule J.

Tax ID or SSN: _____

SCHEDULE A -- PRINCIPALS
OF APPLICANT

	PRINCIPAL #1	PRINCIPAL #2
NAME (include maiden name where applicable)	LOUIS D. PAOLINO, JR.	TERRY W. PATRICK
HOME ADDRESS(ES)	[REDACTED]	[REDACTED]
HOME TELEPHONE NUMBERS	[REDACTED]	[REDACTED]
FAX NUMBER(S)	[REDACTED]	[REDACTED]
CELLULAR NUMBER(S)		
DATE OF BIRTH	0 [REDACTED]	
SOCIAL SECURITY NUMBER(S)	[REDACTED]	[REDACTED]
BUSINESS ADDRESS(ES)	SUITE 101 1000 CRAWFORD PLACE MT. LAUREL, NJ 08054	SUITE 101 1000 CRAWFORD PLACE MT. LAUREL, NJ 08054
BUSINESS TELEPHONE NUMBERS	609-235-6009	609-235-6009
TITLE(S)	PRESIDENT&DIRECTOR	VICE-PRESIDENT & DIRECTOR
FROM (DATE)	08/01/96	08/01/96
TO (DATE)	PRESENT	PRESENT
% OF OWNERSHIP	0%	0%
NUMBER OF SHARES	NOT APPLICABLE	NOT APPLICABLE
HOW OWNERSHIP INTEREST WAS ACQUIRED	NOT APPLICABLE	NOT APPLICABLE

Tax ID or SSN: _____
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**SCHEDULE A (cont'd) -- PRINCIPALS
OF APPLICANT**

	PRINCIPAL #3	PRINCIPAL #4
NAME (include maiden name where applicable)	ROBERT KRAMER	GREGORY KRZEMIEN
HOME ADDRESS(ES)	[REDACTED]	[REDACTED]
HOME TELEPHONE NUMBERS	[REDACTED]	[REDACTED]
FAX NUMBER(S)	[REDACTED]	[REDACTED]
CELLULAR NUMBER(S)		
DATE OF BIRTH	[REDACTED]	[REDACTED]
SOCIAL SECURITY NUMBER(S)	[REDACTED]	[REDACTED]
BUSINESS ADDRESS(ES)	SUITE 101 1000 CRAWFORD PLACE MT.LAUREL, NJ 08054	SUITE 101 1000 CRAWFORD PLACE MT.LAUREL, NJ 08054
BUSINESS TELEPHONE NUMBERS	609-235-6009	609-235-6009
TITLE(S)	SECRETARY	TREASURER
FROM (DATE)	08/01/96	08/01/96
TO (DATE)	PRESENT	PRESENT
% OF OWNERSHIP	0%	0%
NUMBER OF SHARES	NOT APPLICABLE	NOT APPLICABLE
HOW OWNERSHIP INTEREST WAS ACQUIRED	NOT APPLICABLE	NOT APPLICABLE

Tax ID or SSN: _____
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SCHEDULE A (cont'd) -- PRINCIPALS
OF APPLICANT

	PRINCIPAL # 5	PRINCIPAL # 6
NAME (include maiden name where applicable)	EASTERN ENVIRONMENTAL SERVICES, INC.	ROBERT DONNO
HOME ADDRESS(ES)	NOT APPLICABLE	[REDACTED]
HOME TELEPHONE NUMBERS	NOT APPLICABLE	[REDACTED]
FAX NUMBER(S)	[REDACTED]	[REDACTED]
CELLULAR NUMBER(S)	NOT APPLICABLE	
DATE OF BIRTH	NOT APPLICABLE	
SOCIAL SECURITY NUMBER(S)	NOT APPLICABLE	
BUSINESS ADDRESS(ES)	SUITE 101 1000 CRAWFORD PLACE MT.LAUREL, NJ 08054	1281 METROPOLITAN AVE. BROOKLYN, N.Y. 11237
BUSINESS TELEPHONE NUMBERS	609-235-6009	718-821-1000
TITLE(S)	NOT APPLICABLE	VICE PRESIDENT GENERAL MANAGER
FROM (DATE)	08/01/96	
TO (DATE)	PRESENT	
% OF OWNERSHIP	100%	0%
NUMBER OF SHARES	10	
HOW OWNERSHIP INTEREST WAS ACQUIRED		

Tax ID or SSN: _____
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SCHEDULE C(1) – OTHER TRADE WASTE INTERESTS
OF PRINCIPAL EASTERN ENVIRONMENTAL (NAME)

	BUSINESS #1	BUSINESS #2	BUSINESS #3	BUSINESS #4
OTHER BUSINESS NAME	S&S GRADING INC.	PULASKI GRADING, INC.	CAROLINA GRADING, INC.	S&S GRADING OF ILLINOIS, INC.
OTHER BUSINESS ADDRESS(ES)	ROUTE 5, CLARKSBURG, WV, 26301	320 DIXIE BURNSIDE, KY, 42519	125 MCDOWELL EASTOVER, SC, 29044	RR#4, BOX 4452, DRUMS, PA, 18222
OTHER BUSINESS PHONE NUMBER(S)	304-745-3234	606-561-6899	803-783-7312	717-788-6075
TYPE OF EQUITY OR OTHER INTEREST (if "other" explain type of interest)	COMMON STOCK HELD	COMMON STOCK HELD	COMMON STOCK HELD	COMMON STOCK HELD
PERIOD EQUITY HELD	08/89 TO PRESENT	07/90 TO PRESENT	10/90 TO PRESENT	04/95 TO PRESENT
% OF TOTAL EQUITY	100%	100%	100%	100%

Tax ID or SSN: 59-2840783

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SCHEDULE C(1) – OTHER TRADE WASTE INTERESTS
OF PRINCIPAL EASTERN ENVIRONMENTAL (NAME)

	BUSINESS #5	BUSINESS #6	BUSINESS #7	BUSINESS #8
OTHER BUSINESS NAME	NHD, INC.	ALL WASTE REFUSE SERVICES, INC.	AWS OF VIRGINIA, INC.	EASTERN ENVIRON- MENTAL SER- VICES OF THE NORTHEAST, INC.
OTHER BUSINESS ADDRESS(ES)	RR#4, BOX 4452, DRUMS, PA. 18222	RR#4, BOX 4452, DRUMS, PA, 18222	RR#4, BOX 4453, DRUMS, PA, 18222	RR#4, BOX 4452, DRUMS, PA, 18222
OTHER BUSINESS PHONE NUMBER(S)	717- 788-5048	717- 788-6075	717- 788-6075	717- 788-6075
TYPE OF EQUITY OR OTHER INTEREST (if "other" explain type of interest)	COMMON STOCK HELD	COMMON STOCK HELD	COMMON STOCK HELD	COMMON STOCK HELD
PERIOD EQUITY HELD	11/87 TO PRESENT	08/92 TO PRESENT	08/92 TO PRESENT	06/87 TO PRESENT
% OF TOTAL EQUITY	100%	100%	100%	100%

Tax ID or SSN: 59-2840783

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SCHEDULE C(1) – OTHER TRADE WASTE INTERESTS
OF PRINCIPAL EASTERN ENVIRONMENTAL (NAME)

	BUSINESS #9	BUSINESS #10	BUSINESS #11	BUSINESS #12
OTHER BUSINESS NAME	EASTERN ENV- IRONMENTAL SERVICES OF THE SOUTHEAST INC.	PULASKI SANITATION, INC.	ADVANCE ANALYTICAL LABORATORIES INC.	ALLIED WASTE SERVICES, INC.
OTHER BUSINESS ADDRESS(ES)	RR#4 BOX 4452, DRUMS, PA. 18222	320 DIXIE BURNSIDE, KY. 42519	RR#4, BOX 4452, DRUMS, PA. 18222	RR#4, BOX 4452, DRUMS, PA. 18222
OTHER BUSINESS PHONE NUMBER(S)	717- 788-6074	606- 561-6899	717- 788-6074	717- 788-6074
TYPE OF EQUITY OR OTHER INTEREST (if "other" explain type of interest)	COMMON STOCK HELD	COMMON STOCK HELD	COMMON STOCK HELD	COMMON STOCK HELD
PERIOD EQUITY HELD	07/87 TO PRESENT	07/90 TO PRESENT	01/88 TO PRESENT	07/96 TO PRESENT
% OF TOTAL EQUITY	100%	100%	100%	100%

Tax ID or SSN: 59-2840783

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NC07454

**SCHEDULE D -- EMPLOYEES
OF APPLICANT BUSINESS**

NAME (last name first)	RESIDENCE ADDRESS	DOB	PHONE #	POSITION IDENTIFY BY TITLE OR TYPE OF RESPONSI- BILITY	HRS. WORKED PER WEEK	SSN

Tax ID or SSN: _____

SCHEDULE E -- ADMINISTRATIVE FINDINGS

PRINCIPAL/ APPLICANT NAME	AGENCY OR COURT AND DOCKET NO.	NATURE OF THE INVESTIGATION/ CHARGES	OUTCOME

Tax ID or SSN: _____

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SCHEDULE F -- PENDING ADMINISTRATIVE CASES
NOT APPLICABLE

PRINCIPAL/ APPLICANT NAME	AGENCY OR COURT AND DOCKET NO.	NATURE OF THE INVESTIGATION/ CHARGES	STATUS

Tax ID or SSN: _____

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SCHEDULE G -- ANSWERS TO QUESTION 39
NOT APPLICABLE

PRINCIPAL/ APPLICANT INVOLVED	AGENCY OR COURT AND DOCKET NO.	NATURE OF ACTION/ INVESTIGA- TION/CASE	CHARGES BROUGHT (if any)	STATUS OR OUTCOME

Tax ID or SSN: _____

SCHEDULE H – TAX LIENS
NOT APPLICABLE

DATE ENTERED AND DOCKET NO.	NAME OF TAX AUTHORITY	ORIGINAL AMOUNT	AMOUNT OUTSTANDING

Tax ID or SSN: _____

SCHEDULE I – OTHER MONIES OWED TO TAX AUTHORITIES
NOT APPLICABLE

DATE	NAME OF TAX AUTHORITY	AMOUNT	STATUS

Tax ID or SSN: _____

SCHEDULE J -- BANKRUPTCY PROCEEDINGS

NOT APPLICABLE

CAPTION	DATE FILED	DOCKET #	COURT/JURIS- DICTION	STATUS

Tax ID or SSN: _____

APPENDIX A DEFINITIONS

"Applicant" shall mean, if a business entity submitting an application for a license, permit or registration, the entity and each principal thereof.

"Beneficial Interest" shall mean profit, benefit or advantage resulting from a business regardless of whether the person who enjoys such profit, benefit or advantage holds formal ownership or title in the business.

"Predecessor Trade Waste Business" shall mean any business engaged in the removal, collection or disposal of trade waste in which one or more principals of the applicant were principals in the five year period preceding the application.

"Principal" shall mean, of a sole proprietorship, the proprietor; of a corporation, every officer and director and every stockholder holding ten percent or more of the outstanding shares of the corporation; of a partnership, all the partners; if another type of business entity, the chief operating officer or chief executive officer, irrespective of organizational title, and all persons or entities having an ownership interest of ten percent or more; **AND WITH RESPECT TO ALL BUSINESS ENTITIES, ALL OTHER PERSONS PARTICIPATING DIRECTLY OR INDIRECTLY IN THE CONTROL OF SUCH BUSINESS ENTITY.** Where a partner or stockholder holding ten percent or more of the outstanding shares of a corporation is itself a partnership, or a corporation, a "principal" shall also include the partners of such partnership or the officers, directors and stockholders holding ten percent or more of the outstanding shares of such corporation, as is appropriate. For the purposes of this chapter (1) an individual shall be considered to hold stock in a corporation where such stock is owned directly or indirectly by or for (I) such individual; (ii) the spouse of such individual (other than a spouse who is legally separated from such individual pursuant to a judicial decree or an agreement cognizable under the laws of the state in which such individual is domiciled); (iii) the children, grandchildren and parents of such individual; (iv) a corporation in which any of such individual, the spouse, children, grandchildren or parents of such individual in the aggregate own fifty percent or more in value of the stock of such corporation; (2) a partnership shall be considered to hold stock in a corporation where such stock is owned, directly or indirectly, by or for a partner in such partnership; and (3) a corporation shall be considered to hold stock in a corporation that is an applicant as defined in this section where such corporation holds fifty percent or more in value of the stock of a third corporation that holds stock in the application corporation.

Notwithstanding any provision of the above paragraph, in the case of an applicant which is a regional subsidiary of or otherwise owned, managed by or affiliated with a business that has national or international operations, "principal" shall also include any person not employed by the applicant who has direct management supervisory responsibility for the operations or performance of the applicant; and the chief executive

Tax ID or SSN : _____

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officer, chief operating officer and chief financial officer or any person exercising comparable responsibilities and functions, of any regional subsidiary or similar entity of such business.

"Trade Waste" or "Waste" shall mean: all putrescible and non-putrescible materials or substances, except as described below, that are discarded or rejected by a commercial establishment required to provide for the removal of its waste pursuant to section 16-116 of this code as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, street sweepings, rubbish, tires, ashes, contained gaseous material, incinerator residue, construction and demolition debris, medical waste, offal and any other offensive or noxious material. Such term shall also include recyclable materials as defined in subdivision I of section 16-303 of this code that are generated by such commercial establishments.

The following are not "trade waste" or "waste" for purposes of this Application: sewage; industrial wastewater discharges; irrigation return flows; radioactive materials that are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 41 U.S.C. § 2011 et seq.; materials subject to in-situ mining techniques which are not removed from ground as part of the extraction process; and hazardous waste as defined in section 27-0901 of the environmental conservation law.

RELEASE AUTHORIZATION

To all Courts, Probation Departments, Selective Service Boards, Employers, Educational Institutions, Banks, Financial and other Such Institutions, and all Governmental Agencies - federal, state and local without exception both foreign and domestic.

I, _____, as a principal of _____, an applicant for a New York City Department of Sanitation permit to operate a _____ transfer station, have authorized the New York City Department of Sanitation and the New York City Trade Waste Commission to conduct an investigation into my background for the purpose of determining the suitability of the company with which I am affiliated to hold such a permit under Local Law 40 and Local Law 42 of the City of New York.

Therefore, you are hereby authorized to release any and all information pertaining to me, or my company, _____, documentary or otherwise, as requested by an appropriate employee, agent or representative of the Department of Sanitation or the Trade Waste Commission.

This authorization shall supersede and countermand any prior request or authorization to the contrary. A Photostat copy of this authorization will be considered as effective and valid as the original.

Subscribed and sworn to
before me this ____ day
, 19__.

Signature

Typed or printed name

Notary Public

Tax ID or SSN: _____

Page 31 of 32 pages

CERTIFICATION

This certification must be completed before a notary public by the Applicant Business and each current principal of the Applicant Business. Certifications must be notarized when signed.

A MATERIAL FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OR REVOCATION OF A TRANSFER STATION PERMIT THEREBY PRECLUDING APPLICANT BUSINESS OPERATING A TRANSFER STATION. IN ADDITION, SUCH FALSE SUBMISSION MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES.

I _____ (full name), being duly sworn, state:

that I am _____ (title) of _____ (Applicant); and

that I have read and understood the questions contained in the attached application and its attachments, which consists of _____ pages; and

that to the best of my knowledge the information given in response to each question and in the attachments is full, complete and truthful; and

that the New York City Department of Sanitation, the New York City Trade Waste Commission and the New York City Department of Investigation may, by any means they, any or each of them deem appropriate, determine the accuracy and truth of the statements made in this application; and

that all the information submitted is for the express purpose of inducing the Trade Waste Commission to recommend that the Department of Sanitation issue the Applicant a permit to operate a transfer station within Local Law _____.

(Signature of Applicant/Principal of Applicant)

Sworn to before me
this ____ day of ____ 199__.

(Notary Public)

Tax ID or SSN: _____

Page 32 of 32 pages

6 NYCRR Subpart 360-11

[For Use at Transfer Stations]

WHITE COPY Regional Office
YELLOW COPY Central Office
PINK COPY Facility
GREEN COPY Inspector

Violations of Part 360 are Subject to Applicable Civil, Administrative and Criminal Sanctions Set Forth in ECL Article 71, and as Appropriate, the Clean Water and Air Acts. Additional and/or Multiple Violations May be Described on the Attached Continuation Sheet.

☐ PART 360 PERMIT ☒ ORDER ON CONSENT ☐ REGISTERED ☐ EXEMPT ☐ COMPLAINT

OTHER

On Continuation Sheet Identify any other violations.

Does Not Apply To A Registered Transfer Station

I hereby acknowledge receipt of the Facility Copy of this Inspection Report sheet.

Individual In Responsible Charge (Please print)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF SOLID & HAZARDOUS MATERIALSSOLID WASTE MANAGEMENT FACILITY INSPECTION REPORT
Continuation Sheet

DISTRIBUTION ROUTING

WHITE COPY	Regional Office
YELLOW COPY	Central Office
PINK COPY	Facility
GREEN COPY	Inspector

FACILITY NAME <i>Eastern Transfer</i>		LOCATION <i>222 MORGAN AVE</i>		FACILITY NO. <i>241476</i>	DATE <i>05/21/98</i>	TIME <i>10:00</i>
INSPECTOR'S NAME <i>Anthony Masters</i>		CODE <i>5</i>	PERSONS INTERVIEWED AND TITLES <i>Joe Bajesi - operator</i>			
REGION <i>2</i>	WEATHER CONDITIONS <i>55°F cloudy</i>			DEC PERMIT NUMBER <i>2-61104-0009711</i>		
SHEET <i>2 of 2</i>	CONTINUATION SHEET ATTACHED <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		PART(S) 360— <i>n/a.</i> Attached			

Violations of Part 360 are Subject to Applicable Civil, Administrative, and Criminal Sanctions Set Forth in ECL Article 71.
Additional Violations May be Noted on Sheet One of this Inspection Report.

Provide site sketches, clarification, supplemental information, locations of photographs or samples and/or locations of violations.
[Uncorrected violations must be described in detail and located on a sketch].

1. FACILITY WAS OPERATING C&D YARD AT TIME OF INSPECTION.

ON SITE APPROX:

300 yd³ C&D

100 yd³ C&D SCREENINGS

50 yd³ metal

100 yd³ DIRT, ROCK, CONCRETE

2. A REVIEW OF INCOMING LOGS REVEALS

ON 5/11/98 - 2200 yd³ C&D incoming

5/9/98 - 855

5/8/98 - 2,388

5/7/98 - 2,574

3. A review of outgoing logs reveals

demo goes to Oak Ave, Brookhaven, L.A.S., Bender, 710

Screens go to Brookhaven

Dirt, rock, conc goes to S.I.

metal goes to Hoya

4. FACILITY'S CONSENT ORDER HAS EXPIRED AS OF 5/7/98
AND IS OPERATING WITHOUT AUTHORIZATION.

Anthony Masters
Inspector's Signature

I hereby acknowledge receipt of the Facility Copy of this
Inspection Report sheet.

Individual in Responsible Charge (Please print)

6 NYCRR Subpart 360-11

DISTRIBUTION ROUTING	
WHITE COPY	Regional Office
YELLOW COPY	Central Office
PINK COPY	Facility
GREEN COPY	Inspector

Violations of Part 360 are Subject to Applicable Civil, Administrative and Criminal Sanctions Set Forth in ECL Article 71, and as Appropriate, the Clean Water and Air Acts. Additional and/or Multiple Violations May be Described on the Attached Continuation Sheet.

☐ PART 380 PERMIT ☒ ORDER ON CONSENT ☐ REGISTERED ☐ EXEMPT ☐ COMPLAINT

OTHER

* Does Not Apply To A Registered Transfer Station

~~Does Not Apply To A Registered Transfer Station~~

Anthony [Signature]

Inspector's Signature

Individual in Responsible Charge (Please print)



sanitation

LESLIE ALLAN

Deputy Commissioner

Bureau of Legal Affairs

125 Worth Street, Room 710

New York, New York 10013

Telephone (212) 788-3963

Fax (212) 791-3824

SOLID WASTE TRANSFER STATION ENFORCEMENT ORDER

WHEREAS:

1. Pursuant to sections 16-130(b) and 16-131 of the Administrative Code of the City of New York (the "Administrative Code"), and Title 16 of the Rules of the City of New York, chapter 4, subchapter A (the "Rules"), the New York City Department of Sanitation (the "Department") has jurisdiction to regulate and permit putrescible and non-putrescible solid waste transfer stations; and
2. Pursuant to section 16-130(b) of the Administrative Code, it is unlawful for any person to operate a solid waste transfer station within the City of New York without first having obtained a permit from the Commissioner of the Department; and
3. Clean Venture, Inc., d/b/a New York Materials Recycling Corp. ("Clean Venture"), operates a putrescible and non-putrescible solid waste transfer station at 222 Morgan Avenue, Brooklyn, New York (the "Facility") by authority of a New York State Supreme Court Stipulation and Order signed by Clean Venture and the Department on December 2, 1996, and a Temporary Permit/Compliance Agreement dated December 23, 1996; and
4. The terms of that Stipulation and Order authorized Clean Venture to maintain at the Facility no more than 2,000 cubic yards of putrescible solid waste for a maximum of 24 hours from receipt, no more than 5,000 cubic yards of construction and demolition debris ("C&D debris") for a maximum of 48 hours from receipt, and no more than 7,500 cubic yards of recognizable uncontaminated road building material for up to 60 days; and
5. The terms of that Stipulation and Order required Clean Venture to pay permit fees of \$47,000; to enclose the putrescible waste operation at the Facility no later than July 31, 1997; and to complete the environmental impact assessment process to the Department's satisfaction no later than July 31, 1997; and
6. Clean Venture has paid the permit fees, but has not enclosed the putrescible waste operation or completed the environmental impact assessment process; and
7. Eastern Transfer of New York, Inc., a wholly owned subsidiary of Eastern Environmental Services, Inc. ("EES"), has agreed to acquire the Facility and to enclose the putrescible waste operation, to complete the environmental impact assessment process, and to redesign the Facility to mitigate its environmental impacts; and
8. EES has submitted to the Department applications for permits to operate a putrescible and a non-putrescible solid waste transfer station at the Facility; and



9. The Department has issued Notice of Violation No.E090735527 ("Notice") to Clean Venture for operating an unenclosed putrescible waste operation at the Facility, and EES has agreed to pay a civil penalty of no more than \$10,000 for the violation pursuant to §16-133(a)(2) of the Code; and
10. Clean Venture and EES have acknowledged service of the Notice, and have affirmatively waived their rights to notice and hearing in the manner provided by law, and have consented to the issuance of this Order, and have agreed to be bound by its terms, provisions and conditions.

NOW, THEREFORE, based upon all of the above and pursuant to the authority vested in the Commissioner of the Department by section 16-130(b) of the Administrative Code,

IT IS ORDERED THAT:

- A. Effective on the date it acquires Clean Venture, EES may continue to operate the putrescible and non-putrescible solid waste transfer station at the Facility, *provided that* EES complies with all the terms and conditions of this Order. This authority to operate is temporary pending completion of a background investigation by the Department and the New York City Trade Waste Commission (the "Commission") pursuant to sections 16-131.1 and 16-509 of the Administrative Code. This authority to operate is conditioned on full cooperation by EES in such investigation and compliance with all other terms and conditions set forth herein. If, after completion of the background investigation, the Department finds that EES is not "fit" to operate a transfer station, the Department shall revoke this Order.
- B. Upon the execution of this Order, EES shall submit to the Department a check payable to the Finance Commissioner, City of New York, in the amount of \$10,000, which is the civil penalty provided for in §16-133(a)(2) of the Code. The Department shall hold the check until EES appears before the New York City Environmental Control Board ("ECB") on the return date specified on the Notice. The Department shall deliver the check to the ECB on that date. EES then shall provide the Department with an ECB Clearance Letter verifying payment of all penalties required under this Order.
- C. Upon the execution of this Order, EES shall submit to the Department Clearance Letters from the Department and the ECB verifying that all fines, penalties, and judgments assessed against Clean Venture, EES and its affiliates, PJ's Environmental Corp., and Patsy Serra have been fully paid and satisfied.
- D. Upon the execution of this Order, EES is authorized to accept, process, and transfer putrescible solid waste at the Facility on the following terms and conditions:
 - (1) The New York State Department of Environmental Conservation ("NYSDEC") shall have granted EES written authorization for the putrescible waste operation. A copy of such written authorization shall be provided to the Department.
 - (2) All putrescible solid waste process and transfer operations shall be conducted within an enclosed structure, the plans and design of which are subject to the Department's review and approval.

- (3) Pending the completion of construction of an approved, permanent structure to house the putrescible waste operation at the Facility, EES may use the existing on-site vehicle maintenance building for the putrescible waste operation, subject to the conditions outlined in subparagraph (4) of this paragraph.
- (4) Before it may use the vehicle maintenance building for the putrescible waste operation at the Facility, EES must:
- clean floor drains and install oil-water separators
 - install odor control devices acceptable to the Department
 - install one or more ventilation fans acceptable to the Department
 - demarcate the tipping floor with yellow paint lines
 - obtain written authorization from NYSDEC to use the maintenance building for a putrescible waste operation
 - obtain from the Department of Buildings appropriate authorization, such as a Certificate of Occupancy, for use of the maintenance building as a transfer station
 - submit a restoration bond in the amount of \$120 per cubic yard of putrescible waste which the Department and the NYSDEC authorize EES to process in the maintenance building
 - submit a site plan showing the location of the maintenance building in relation to the other waste operations at the Facility
 - submit a certified engineer's blueprint of the maintenance building showing the location, capacity, manufacturer, and date of installation of the ventilation equipment
 - submit a certified engineering plan for the control of noise, vibrations, and odors from the putrescible waste operation in the maintenance building
 - submit a list of all of the deodorants that will be used, and the method of application
 - submit proof of a contract with an exterminator to monitor the putrescible waste operation for vectors.
 - submit written confirmation from a permitted putrescible solid waste transfer station that it will receive and process putrescible solid waste from the Facility, if necessary
 - submit a map, certified by a professional engineer, describing not less than one square mile of the area surrounding the transfer station clearly marking the routes where transport vehicles will be transporting solid waste into and out of the Facility, and connecting roadways permitted to be used by the transporting trucks
- (5) The amount of putrescible waste handled in the maintenance building shall be limited to the amount authorized by NYSDEC, but in no event will be more than 250 tons (or 500 cubic yards) per day.
- (6) The tipping area of the maintenance building shall be cleaned, deodorized, and free of all solid waste between 9:00 and 9:30 a.m., Monday through Friday, and between 1:30 and 2:00 p.m. on Saturday.
- (7) When EES has completed construction of the permanent structure to house the putrescible waste operation at the Facility, it may accept and process putrescible waste in an amount authorized in writing by NYSDEC, provided EES shall not store more than 2,000 cubic yards of putrescible waste at the Facility.

- (8) Before commencing the putrescible waste operation in the permanent structure, EES must submit all of the Required Documents listed in Exhibit A, as well as any and all documents or information reasonably required by the Department in connection with the application to operate a putrescible solid waste transfer station at the Facility, and the Department must approve all submissions.
- E. Upon the execution of this Order, EES is authorized to accept, process, and transfer C&D debris at the Facility in an amount authorized in writing by NYSDEC, but not to exceed 5,000 cubic yards per day, provided that EES has submitted to the Department a copy of such written authorization and has submitted a restoration bond in the amount of \$45 per cubic yard of C&D debris which the Department and NYSDEC authorize EES to store at the Facility.
- F. The Facility may operate 24 hours per day, Monday through Saturday.
- G. Within ninety (90) days after the effective date of this Order, EES shall submit to the Department all of the Required Documents listed in Exhibit B, as well as any and all documents or information reasonably required by the Department in connection with the application to operate a non-putrescible solid waste transfer station at the Facility.
- H. Within four (4) months after the effective date of this Order, EES shall submit to the Department all documentation, information, forms, and fees as are then required to complete the environmental impact assessment of the Facility which Clean Venture has begun.
- I. EES shall submit to the Department progress reports on the modification of the Facility, including plans and drawings for the modified site, on the last days of November 1997 and February and May 1998.
- J. This Order is not a permit. However, so long as EES is in substantial compliance with the terms and conditions of this Order, the Department shall not take enforcement action against it solely on the basis of its operation of a transfer station without a permit, provided that its failure to comply fully with the terms of Paragraphs A through I shall entitle the Department to take any enforcement action it deems appropriate, including but not limited to, revocation of this Order and closure of the transfer station without a hearing ten (10) business days after personal notice to EES at the address set forth in Paragraph N below, or fifteen (15) business days after notice by certified mail.
- K. This Order is issued upon the condition that the putrescible and non-putrescible solid waste operations at the Facility comply with all federal, state and local laws, rules and regulations. EES agrees that service of a Notice of Violation upon any employee at the Facility shall constitute valid service for purposes of subjecting EES to the jurisdiction of the Environmental Control Board.
- L. The Department reserves the right to require EES to take any additional measures required to protect human health and the environment, upon reasonable notice and for just cause.
- M. The Department's failure to strictly enforce any provision of this Order shall not operate as a waiver of such provision nor affect the validity of any other provision hereof.

N. All notices and correspondence pertaining to this Order shall be served personally or delivered by certified mail as follows:

a. To the Department:

Thomas Milora
Director, Permit and Inspection Unit
New York City Department of Sanitation
137 Centre Street, Room 104
New York, NY 10013

with copies (also by certified mail) to:

Leslie Allan, Esq.
Deputy Commissioner of the Bureau of Legal Affairs
New York City Department of Sanitation
125 Worth Street, Room 710
New York, NY 10013

Jody S. Hall
Administrative Staff Analyst, Bureau of Legal Affairs
New York City Department of Sanitation
125 Worth Street, Room 708
New York, NY 10013

b. To the Applicant:

Eastern Transfer of New York, Inc.
222 Morgan Avenue
Brooklyn, New York 11237

with a copy (also by certified mail) to:

Lawrence R. Schillinger, Esq.
15 Elk Street
Albany, New York 12207

O. The effective date of this Order shall be July 31, 1997. The expiration date of this Order shall be July 31, 1998.

Exhibit A
REQUIRED DOCUMENTS
Modified Putrescible Waste Facility
Eastern Transfer of New York, Inc.
222 Morgan Avenue
Brooklyn, New York

1. A site plan for the modified site, completed in conformance with §4-13 of the Department's putrescible solid waste transfer station rules.
2. An engineering report for the modified putrescible waste facility, completed in conformance with §4-13 of the Department's putrescible solid waste transfer station rules. The engineering report shall specify areas in such facility for all activities relating to the receipt, tipping, sorting, processing, compaction and storage of solid waste.
3. A Certificate of Occupancy from the NYC Department of Buildings or a Certificate of Completion from the NYC Department of Business Services providing a Use Group 18 Use for the site, including the new putrescible waste facility.
4. A map, certified by a professional engineer, describing not less than one square mile of the area surrounding the putrescible waste facility, clearly marking the routes where transport vehicles will be transporting solid waste into and out of the Facility, and connecting roadways permitted to be used by the transporting trucks.
5. A restoration bond in the amount of \$120 per cubic yard of putrescible waste which the Department and the NYSDEC authorize EES to store at the putrescible waste facility.
6. A certified engineer's blueprint showing the location, capacity, manufacturer, and date of installation of the ventilation equipment.
7. A certified engineering plan for the control of noise, vibrations, and odors from the putrescible waste operation.
8. A list of all of the deodorants that will be used, and the method of application
9. Written confirmation from a permitted putrescible solid waste transfer station that it will receive and process putrescible solid waste from the facility, if necessary.
10. Proof of a contract with an exterminator to monitor the putrescible waste operation for vectors.

Exhibit B
REQUIRED DOCUMENTS
Construction and Demolition Debris Facility
Eastern Transfer of New York, Inc.
222 Morgan Avenue
Brooklyn, New York

1. A site plan completed in conformance with §4-05 of the Department's non-putrescible solid waste transfer station rules.
2. A map, certified by a licensed professional engineer, describing not less than one square mile of the area surrounding the construction and demolition debris facility, clearly marking the routes where transport vehicles will be transporting solid waste into and out of the facility, and connecting roadways permitted to be used by the transporting trucks.
3. A written statement from a licensed professional engineer or registered architect certifying to the nine conditions found in the Department's non-putrescible solid waste transfer station rules.
4. A dust control plan acceptable to the Department.
5. A certified copy of the deed and title insurance for the site.
6. Proof of workers' compensation.

- P. This Order may not be assigned or transferred in whole or in part without the Department's prior written agreement.
- Q. This Order contains the entire agreement of the parties and may not be changed, varied, modified, supplemented or amended except by written instrument signed by both parties.

Dated: New York, New York
September 5, 1997

New York City Department of Sanitation

By: Leshe Allen
Deputy Commissioner

Consented and Agreed to by:

Eastern Transfer of New York, Inc.

By: Robert M. Kramer
Robert M. Kramer
Executive Vice President - General Counsel

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----X
In the Matter of the Alleged Violations of
Articles 27 and 71 of the New York State
Environmental Conservation Law (ECL) and
Part 160 of Title 6 of the Official
Compilation of Codes, Rules and Regu-
lations of the State of New York (NYCRR)

ORDER ON
CONSENT

-by-

New York Carting Co., Inc.

DEC FILE NO.
R2-2631-89-01

Respondent.
-----X

WHEREAS:

1. The Department of Environmental Conservation ("DEC") is a Department of the State of New York with jurisdiction to enforce the environmental laws of the State pursuant to §3-0302 of the Environmental Conservation Law ("ECL").

2. Pursuant to Article 27 of the ECL and Parts 160 and 621 of Title 6 of the New York Codes, Rules and Regulations (NYCRR), the DEC is responsible for regulating the construction and operation of solid waste management facilities including, but not limited to, solid waste transfer stations and recyclables handling and recovery facilities in the State of New York and issuing permits for such construction and operation.

3. Respondent New York Carting Co., Inc. ("Respondent" or "New York Carting") is a New York corporation. It operates a solid waste transfer station and recyclables handling and recovery facility at 222 Morgan Avenue, Brooklyn, New York 11211 (the "facility"). Paul Serra is the President of New York Carting.

4. New York Carting and Paul Serra entered into an Order on Consent with the DEC on August 10, 1989 (the "Consent Order"). The Consent Order, DEC File No. R2-2082-88-10, is attached hereto as Attachment 1.

5. New York Carting and Paul Serra entered into an Agreement of the Parties with the DEC on December 29, 1989 (the "Agreement of the Parties"). The Agreement of the Parties is attached hereto as Attachment 2. In the Agreement of the Parties the DEC granted Respondents temporary authority to operate the facility under the terms of the Consent Order. That temporary authority was subsequently extended by the DEC. Most recently it was extended through June 22, 1990. (See Attachment 3).

6. In a Complaint dated October 15, 1989 (the "Complaint"), the DEC alleged that on October 10, 1989 New York Carting and Paul Serra violated the Consent Order. The Notice of Hearing and Complaint is attached hereto as Attachment 4. The Complaint alleges that New York Carting violated the following provisions of the Consent Order: paragraph 7(b) by having over 300 cubic yards of material on the dumping pad at 9:30 p.m.; paragraph 7(c) by having over 300 cubic yards of putrescible material on the site at 9:30 p.m.; paragraph 11 by having piles of material in excess of the 10-foot maximum set out in the Consent Order; one pile of putrescible material 20 feet high and one pile of scrap iron 20 feet high.

7. In an Amended Complaint dated May 24, 1990 (the "Amended Complaint"), the DEC alleged that on May 8, 1990 New

York Carting and Paul Serra violated the Consent Order. The Notice of Hearing and Amended Complaint is attached hereto as Attachment 5. The Amended Complaint alleges that New York Carting violated the following provisions of the Consent Order: paragraph 7(b) by having over 100 cubic yards of material on the dumping pad between 9:00 p.m. and 9:20 p.m.; paragraph 7(c) by having over 100 cubic yards of putrescible material on the site between 9:00 p.m. and 9:20 p.m.

8. Pursuant to ECL §71-2703, violation of an Order on Consent is a violation of the ECL, and subjects the violator to a civil penalty of up to \$2,500 for each violation and an additional penalty of up to \$1,000 for each day that the violation continues, as well as to criminal penalties and injunctive relief.

9. The DEC further alleged in the Complaint that New York Carting and Paul Serra violated 6 NYCRR §360-11.4(c) by not having a sign posted with the hours of operation and the types of solid waste accepted and not accepted at the facility.

10. Pursuant to ECL §71-2703 violation of 6 NYCRR § 360-11.4(c) subjects the violator to a civil penalty of up to \$2,500 for each violation and an additional penalty of \$1,000 for each day the violation continues, as well as to criminal penalties and injunctive relief.

11. New York Carting commenced an Article 78 proceeding in the Supreme Court of the State of New York, County of Queens, Index Number 18780/89, seeking an order of mandamus directing the

DEC to process and issue permits to construct and operate the facility.

12. New York Carting formally denies the allegations stated in paragraphs 6, 7 and 9 above, and the DEC formally denies the allegations in New York Carting's petition referred to in paragraph 11.

13. DEC and New York Carting, recognizing the burden, expense and risks inherent in litigation, hereby agree to discontinue both the administrative enforcement and Supreme Court proceedings on the terms and conditions set forth at paragraphs I through XI below and in the attached Compliance Schedule.

14. DEC and New York Carting consent to the issuance and entry of this second Order on Consent and agree to be bound by the terms, provisions, and conditions contained herein. This Order on Consent (hereinafter referred to as "Order") shall replace the prior Order on Consent entered into on August 10, 1989.

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. New York Carting and its officers, directors, employees, agents, successors, and assignees shall comply with the terms, conditions, and provisions of the attached Compliance Schedule incorporated herein and made a part of this Order. If the facility or subject property is sold, leased, or otherwise conveyed or transferred, the contract of conveyance shall impose on the transferee the obligation to comply with the terms of this

Order.

II. New York Carting shall pay a civil penalty in the amount of eight thousand five hundred (\$8,500) dollars to DEC simultaneously with its execution of this Order. Of this total, \$5,000 is the unpaid penalty assessed under the August 10, 1989 Order on Consent, and the balance of \$3,500 is an additional penalty for subsequent violations that occurred prior to this Order. In addition New York Carting was closed for one designated by the DEC, which was the twenty-four (24) hour period from 10:00 P.M. on Wednesday, June 13, 1990 until 10:00 P.M. on Thursday, June 14, 1990. The agreement to pay the aforementioned penalties and to close for one day is not an admission of guilt by Respondent.

III. New York Carting and its President, Paul Serra, agree that Paul Serra shall be personally liable to DEC, jointly and severally with New York Carting, for the monetary penalties that are assessed or may be assessed under the terms of this Order, if New York Carting does not pay these penalties to DEC within five (5) days of demand.

IV. This Order is not a permit. This Order constitutes temporary authorization for New York Carting to operate its facility to handle putrescible material and construction and demolition ("C&D") debris for a period of one hundred and twenty (120) days from the effective date of the Order. This temporary authority to operate shall expire automatically at the end of this 120-day period unless DEC agrees in writing to renew it.

DRC shall not renew the temporary authority unless New York Carting submits a permit application, within 90 days of the effective date of this Order, that complies with all or a requirements set forth in Attachment 4. DRC shall not require additional information of New York Carting except upon issuance of a Notice of Compliance Application. Upon receipt of this application, DRC shall expeditiously review it for compliance with the terms of Part 621.5 et seq. This temporary authority to operate is contingent upon New York Carting's strict compliance with the terms and provisions of this Order, 6NYCRR Part 160 and the ECL. If, for any reason, the temporary authority lapses or is revoked subject to terms and conditions of this Order, New York Carting must cease operating the facility and shall not accept any more solid waste and shall remove all solid waste from the facility in a manner acceptable to DRC.

V. (A) New York Carting's failure to comply with any of the terms, conditions and provisions of this Order shall constitute a violation of this Order and of ECL Article 27. All violations shall be adjudicated administratively as provided for by 6NYCRR Part 622, except violations of paragraphs 15(a), (d) or (e) of the attached Compliance Schedule. The Commissioner may revoke the temporary authority upon a finding of a violation of this Order, such revocation subject to the provisions of 6NYCRR Part 622.

(B) Violations of paragraphs 15(a), (d) or (e) of the Compliance Schedule shall subject New York Carting to the following penalties, without further administrative adjudication:

(a) first violation: facility must be closed

for 1 day designated by the DEC and a \$2,300 penalty;

(b) second violation: facility must be closed for 3 days designated by the DEC and a \$5,000 penalty; and

(c) third violation: facility must be closed and remain closed until the violation is adjudicated.

The facility must be closed and the monetary penalty paid to DEC within twenty-four (24) hours after DEC notifies New York Carting of the violation(s). The notification shall contain an affidavit by a DEC employee describing the violation(s) and the penalty or penalties imposed. Failure to close the facility and/or pay the assessed penalty imposed under (B) above, in the time provided, shall upon notice by the DEC result in the immediate closure of the facility.

VI. All reports and submissions required herein shall be made to Region II, New York State Department of Environmental Conservation, 47-40 21st Street, Long Island City, New York 11101, Attn: Legal Affairs, except that information which is required as part of a permit application shall be directed to the Regional Permit Administrator, Region II.

VII. For the purpose of insuring compliance with this Order, New York Carting shall allow duly authorized representatives of the DEC access to the facility and subject property without prior notice at such times as may be desirable or necessary in order

for DEC to inspect and determine the status of New York Carting's compliance with this Order.

VIII. Nothing in this Order shall relieve New York Carting of the obligation of paying any fees (for permits or otherwise) which may be due the DEC or any other governmental agency.

IX. Respondent shall comply with all applicable Federal, State and Local Laws, Rules and Regulations.

X. Respondant must apply for all other necessary Federal, State and City permits.

XI. The effective date of this Order shall be the date upon which it is signed on behalf of DEC.

DATED: Long Island City, New York
June, 1990

7-2-96

THOMAS G. JORLING, Commissioner
New York State Department of
Environmental Conservation

By:

Carol Ash
Carol Ash - Regional Director
Region II

NEW YORK CARTING CO., INC.

By:

Paul Serra
Paul Serra, President

PAUL SERRA, Individually

By:

Paul Serra
Paul Serra

COMPLIANCE SCHEDULE

In addition to all of the requirements for operation contained in this Order and the provisions of 6 NYCRR Part 360, except as otherwise provided in this Order, Respondent shall immediately adhere to the following conditions for operation:

1. The facility shall not receive, store or handle more than 5,000 cubic yards of putrescible material and no more than 5,000 cubic yards of construction and demolition ("C&D") debris per day. No other solid waste of any kind shall be admitted into the facility. All other solid waste, including but not limited to, industrial waste as defined in 6 NYCRR Part 371, medical waste as defined in 6 NYCRR Part 397, and waste containing asbestos, shall be considered unauthorized waste.

2. All putrescible materials must be removed from the site within 24 hours. This includes material in containers, trucks, or trailers parked on the site.

3. Authorized activities are limited to the receipt, unloading, sorting, materials recovery, compaction, temporary storage, and trans-shipment of putrescible material and C&D debris. All other activities including, but not limited to, disposal, combustion, and composting, are prohibited at the facility.

4. C&D debris that is not recovered for recycling shall be removed from the site within 48 hours.

5. All material transported from the facility shall be

handled lawfully and, insofar as it is disposed, disposed lawfully.

6. Immediately upon discovery of any unauthorized waste at the facility, Respondent shall adequately segregate and secure such unauthorized waste, and notify DEC Region II within one hour of such discovery. Respondent shall remove the unauthorized waste within 24 hours of such discovery, and if, required by State law, shall have this waste removed by a waste transporter permitted to handle such waste pursuant to 6 NYCRR Part 364.

7. Subject to the terms of this Order no material pile at the facility shall exceed a height of 10 feet.

8. Respondent shall erect a fence 10 feet in height within 30 days of the effective date of this Order and shall use this fence to segregate the putrescible materials from all other materials on facility site.

9. Respondent shall not permit any access to the facility unless an attendant is on duty.

10. Respondent shall keep a daily log, listing the materials brought into and taken out of the facility. The log shall indicate, for each type of material, the quantity (in cubic yards), the addresses of origin, the addresses of destinations, and whether the material is to be recycled or disposed of at each destination. Respondent shall submit a monthly log summarizing these daily logs, by the fifth day of the succeeding month, to Mr. Richard Bruscone, the Solid Waste Engineer at DEC Region II. Respondent shall maintain its daily logs for three years and

shall make the daily logs available to the DEC immediately upon request.

11. There shall be no open fire at the facility as defined in 6 NYCRR Part 218.

12. The facility shall be operated and maintained so as not to present an eyesore to the community. In this regard, Respondent shall take all practicable measures including, but not limited to, the following: maintaining a fence on the perimeter of the facility of uniform height, color, and opaque material and in good repair; promptly removing, within no more than 24 hours, blowing paper or other solid waste caught on a fence or elsewhere at the site; keeping the street and sidewalk adjacent to the facility free of solid waste; cleaning this area once every 24 hours if necessary; taking all practicable measures to prevent any vehicles and containers entering and leaving the facility from dripping or spilling any material; and cleaning, painting, repairing, and otherwise maintaining the facility so as to avoid presenting an eyesore.

13. Respondent shall control vectors, dust, and odors so that they do not constitute a nuisance or hazard to public health, safety, welfare, or property. Respondent shall manage the material handled at the facility so as to prevent the uncontrolled movement of material off the site due to wind, rain, or other elements. Respondent shall handle all leachate and runoff from any and all material at the facility in a manner approved by either New York City or the DEC.

14. Respondent shall not use barges in the waters adjacent to the site for the loading or storage of any material. DEC may modify this prohibition, only for the handling of scrap metal, before it issues Respondent a permit to operate. Any such modification will be contingent on a proper showing by Respondent that the methods and materials that will be used will fully protect the waters of Newtown Creek against pollution and filling.

15. Respondent agrees to use all practicable means pursuant to 6 NYCRR Part 360 to mitigate odors from putrescible materials on the site, and to prevent such odors from extending beyond the property line. Respondent shall immediately undertake the following remedial actions:

(a) Putrescible materials shall kept separate from all other kinds of materials on the site at all times;

(b) All processing, tipping, sorting, storage and compaction of putrescible materials shall be done on a concrete or asphalt pad;

(c) Putrescible materials must be kept on the pad or in containers, trucks or trailers on the site;

(d) No putrescible materials of any kind shall be kept on the site, whether on the pad or in containers, trucks, or trailers, between 10:00 a.m. on Saturday and 12:01 a.m. on Monday;

(e) The concrete or asphalt pad shall be completely cleared of all solid waste, between the hours of 9:00 p.m. and

10:00 p.m., Monday through Friday. If any putrescible material removed from the pad prior to 9:00 p.m., does not fill a 63 cubic yard trailer used to remove such material from the site, that trailer may remain on the site between 9:00 p.m. and 10:00 p.m. No other container, truck or trailer on the site may contain any putrescible waste between 9:00 p.m. and 10:00 p.m., Monday through Friday. All putrescible waste removed from the pad must be transported away from the site for reuse or ultimate disposal.

(f) No putrescible material may remain on the facility site for more than twenty-four (24) hours. In order to insure the continuous removal of putrescible materials from the site, Respondant must:

(i) Have sufficient vehicles waiting on the site facility to remove the putrescible materials; and

(ii) Have sufficient back-up equipment available at the site to replace any machinery used for sorting, compacting or transferring solid waste, if that machinery becomes inoperable;

(g) Any and all activities involving solid waste of any kind which are conducted out-of-doors shall cease no later than 3:00 p.m. on Saturday and shall not resume prior to 12:01 a.m. Monday;

(h) All vehicles transporting material to or from the facility shall be covered in order to prevent spillage and odors. All vehicles transporting or storing putrescible materials must

be pretreated with deodorizing granules (of a kind approved by DEC). All incoming loads of putrescible materials shall be treated with approved deodorizing granules before being deposited on the pad or in storage containers, trucks, or trailers.

16. Respondent shall take all practicable measures to assure that the operation of the facility will not obstruct traffic. To prevent such obstruction, Respondent shall at a minimum take the following measures:

- (a) Vehicles waiting to enter, leave, load, or unload at the facility, or that are in any way associated with the facility, shall not block any street, double park, or be cleaned outside the site;
- (b) Containers used to transport, store or otherwise handle solid waste, that are not on or attached to trucks, shall not be placed or parked on any property outside of the facility, including any city streets;
- (c) All trucks entering and leaving the facility shall use only designated truck routes. Respondent shall advise independent truckers of this requirement, in writing, within 5 days after the effective date of this Order.
- (d) No trucks shall wait on the streets adjacent to the site; any truck waiting to load or unload shall wait inside the site.
- (e) No trucks shall idle their engines while waiting.

on the site; engines shall run only when a truck is entering, leaving, loading, unloading, or moving about on the site.

17. Respondent shall exterminate vectors weekly, shall maintain records of such extermination, and shall make such records available for inspection by DEC upon demand. All exterminators must be certified by DEC and use only DEC-approved pesticides.

18. Respondent shall provide adequate toilet and sanitary facilities for operating personnel.

CONSENT BY CORPORATE RESPONDENT

Respondent hereby consents to the issuance and entry of the foregoing Order without further notice, waives its right to a hearing herein and agrees to be bound by the provisions hereof.

NEW YORK CARTING CO., INC.

BY: Paul Serra
PAUL SERRA

TITLE: Pending

DATE: 6/20/90

CORPORATE ACKNOWLEDGEMENT

State of New York: County of Seneca ss. I
On this 21 day of June 1990, before me personally came
Paul Serra, to me known, who being duly sworn,
deposed and stated that he resides at 200 1/2
Seneca, that he is the

President of New York Carting, the
Corporation described in and which executed the foregoing
instrument, and that he was authorized by said Corporation to
execute the foregoing instrument.

Lawrence B. Goldberg
Notary Public

LAWRENCE B. GOLDBERG
Notary Public, State of New York
No. 21-4726188

LAWRENCE R. SCHILLINGER

ATTORNEY AND COUNSELOR AT LAW

15 ELK STREET
ALBANY, NY 12207
(518) 436-3600 FAX: (518) 436-3628

VIA FACSIMILE

May 7, 1998

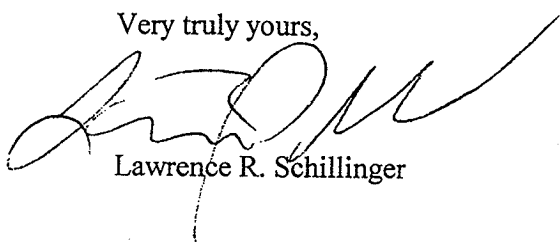
Laurieann Silberfeld, Esq.
Regional Attorney
New York State Department of
Environmental Conservation
47-40 21st Street
Long Island City, NY 11101

Re: Eastern Transfer of New York
222 Morgan Avenue
Brooklyn, NY
Order No. R2-2631-89-01

Dear Ms. Silberfeld,

Please provide an extension of the above-referenced Order on Consent.
Thank you for your attention and cooperation.

Very truly yours,



Lawrence R. Schillinger

c.c. Eastern Transfer of New York, Inc.

New York State Department of Environmental Conservation
Region 2 - Legal Affairs Division
47-40 21st Street
Long Island City, NY 11101-5407
(718) 482-4965 Fax (718) 482-4962



John P. Cahill
Commissioner

February 10, 1998

BY FAX & REGULAR MAIL

Lawrence R. Schillinger, Esq.
Attorney & Counselor at Law
15 Elk Street
Albany, New York 12207

Re: Eastern Transfer of New York, Inc
R2-2631-89-01

Dear Mr. Schillinger:

Your Order on Consent has expired on February 7, 1998. By letter dated January 30, 1998, you requested renewal of that order. DEC has performed certain inspections and hereby agrees to extend your authority to operate the facility for a period of ninety days.

Therefore, you may operate the facility through May 7, 1998. All the other terms and conditions of the order shall remain in full force and effect.

This extension is without prejudice to any remedies that DEC may seek due to violations existing as of this date.

Very truly yours,

Laurie Silberfeld
Regional Attorney

cc: Anthony Masters
Rich Bruzzone
Andrew Kreshik
Lori King

TOTAL P.02

New York State Department of Environmental Conservation
Region 2 - Legal Affairs Division
47-40 21st Street
Long Island City, NY 11101-5407
(718) 482-4965, fax (718) 482-4962



John P. Cahill
Commissioner

November 7, 1997

BY FAX & REGULAR MAIL

Lawrence R. Schillinger
15 Elk Street
P O Box 7275, Capitol Station
Albany, New York 12207

Re: Eastern Transfer of New York, Inc
R2-2631-89-01

Dear Mr. Schillinger:

The extension of your Order on Consent has expired on November 7, 1997. You requested its renewal and DEC has performed certain inspections and has agreed to extend your authority to operate the facility for a period of ninety days from the date of this letter.

Therefore, you may operate the facility through February 7, 1998. All the other terms and conditions of the order shall remain in full force and effect.

This extension is without prejudice to any remedies that DEC may seek due to violations existing as of this date.

Very truly yours,

Laurie Silberfeld
Regional Attorney

cc: Anthony Masters
Rich Bruzzone
Andrew Kreshik
Lori King

Eastern - DEC Cons

LAWRENCE R. SCHILLINGER

ATTORNEY AND COUNSELOR AT LAW

15 ELK STREET
ALBANY, NY 12207
(518) 436-3600 FAX: (518) 436-3628

FEDERAL EXPRESS

October 31, 1997

Paul A. Gallay, Esq.
Regional Attorney
New York State Department of
Environmental Conservation
47-40 21st Street
Long Island City, NY 11101

Re: Eastern Transfer of New York
222 Morgan Avenue
Brooklyn, NY
Order No. R2-2631-89-01

Dear Paul,

This letter is to follow up with our telephone conversation and to confirm that the DEC has extended the above-referenced Consent Order until November 7, 1997, pending the Department's issuance of a longer term extension by its own letter.

If you have questions, please call. Thank you for your attention in this matter.

Very truly yours,

 (MS)

Lawrence R. Schillinger

enc.

cc. Eastern Transfer of New York, Inc.



sanitation

LESLIE ALLAN
Deputy Commissioner
Bureau of Legal Affairs
125 Worth Street, Room 710
New York, New York 10013
Telephone (212) 788-3963
Fax (212) 791-3824

April 20, 1998

Mr. Gavin Donahue
Deputy Commissioner
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12233

Re: Department of Sanitation Enforcement Order for Eastern Environmental
Services Transfer Station at 222 Morgan Avenue in Brooklyn, New York


Dear Mr. Donahue:

I understand that you are interested in the history and status of the Department of Sanitation ("DOS") enforcement order authorizing Eastern Environmental Services ("Eastern Environmental") to operate a transfer station at 222 Morgan Avenue in Brooklyn, New York. The following is a summary of that history and status.

Clean Venture, Inc., d/b/a New York Materials Recycling Co., operated an unenclosed putrescible and non-putrescible solid waste transfer station at the 222 Morgan Avenue site beginning in August 1991 when it acquired the property from New York Carting Co. Clean Venture had a Consent Order from the State DEC authorizing it to handle 5,000 cubic yards of putrescible solid waste and 5,000 cubic yards of non-putrescible solid waste each day, and a Compliance Agreement from DOS. These documents authorized Clean Venture to operate the transfer station while it underwent environmental impact review, which is a precondition for obtaining permits from DOS and DEC. At that time, which was soon after the enactment of Local Law 40 of 1990 and the adoption of DOS operating regulations for non-putrescible solid waste transfer stations, DOS and DEC regularly authorized existing transfer stations to continue operating pending the completion of the lengthy environmental impact review process. (This stance was due in great part to the fact that whenever DOS and DEC tried to close down an existing transfer station, the courts allowed the station to resume operating.)

During the terms of the Consent Order and Compliance Agreement, DOS issued many Notices of Violation ("NOVs") to Clean Venture for excess volume at the site. The

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Environmental Control Board ("ECB"), which adjudicates transfer station NOV's, accepted a settlement of the NOV's which provided for a monthly payout schedule for the penalties. Although Clean Venture has always claimed that the ECB settlement included DOS agreement to an increase in Clean Venture's authorized waste handling volume, I find no documents in the files supporting this claim.

Clean Venture pursued the environmental impact assessment process, which was a precondition to obtaining a DEC permit to construct a building to house the putrescible waste operation, very unenthusiastically. In the Summer or Fall of 1995, DOS indicated that it intended not to renew its Compliance Agreement with Clean Venture, in part because the putrescible waste operation was unenclosed. In response to this threat, Clean Venture commenced an Article 78 proceeding in New York State Supreme Court to compel DOS to continue the authorization to operate, to increase Clean Venture's permissible waste volume to 10,000 cubic yards per day, to refrain from issuing NOV's for excess volume, and to seek dismissal in the ECB of all outstanding NOV's. The court issued a temporary restraining order and preliminary injunction granting the relief requested. The effect of this injunction was to give Clean Venture court authorization to operate, while preventing DOS from closing the transfer station or issuing NOV's for excess volume.

DOS and the New York City Law Department commenced negotiations with Clean Venture to settle the lawsuit. During these negotiations, Clean Venture continued to operate under the authority of the preliminary injunction. In July 1996, DEC modified Clean Venture's Consent Order so as to increase permissible waste volumes to 5,000 cubic yards of C&D debris, 7,500 cubic yards of uncontaminated road building material, and 2,000 cubic yards of putrescible waste. In September 1996, DOS and Clean Venture reached an agreement whereby Clean Venture agreed:

- to pay \$23,000 to the ECB for its outstanding penalties, at a rate of \$6,000 per month;
- to renew and update its permit application and to pay DOS \$40,000 in past permit application fees;
- to process no more than 2,000 cubic yards per day of putrescible waste;
- to process no more than 5,000 cubic yards of construction and demolition debris every two days;
- to store no more than 7,500 cubic yards of clean fill at the site;
- to enclose the putrescible waste operation by July 31, 1997; and
- to complete its environmental impact review process by July 31, 1997.

Mr. Gavin Donahue
April 20, 1998
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(The increased waste volumes conformed to those that DEC had already agreed to in July.)

The New York City Law Department embodied that agreement in a Stipulation and Order signed on December 2, 1996 and filed with the New York County Clerk on December 24, 1996. The Stipulation benefitted DOS because it lifted the court order which tied our hands with respect to enforcing our regulations against Clean Venture and it established that Clean Venture would enclose its putrescible waste operation, which was the highest priority for us. At the time, Clean Venture was the only unenclosed putrescible waste transfer station in the City.

Clean Venture operated in compliance with the terms of the Stipulation. Then, in July 1997, Eastern Environmental began negotiations to purchase Clean Venture's assets. The New York City Trade Waste Commission favored this purchase, because it would bring a new, responsible corporate entity into the New York waste market. As a condition of the purchase, Eastern Environmental needed assurance that it could assume Clean Venture's operating authority for 222 Morgan Avenue.

While DEC simply transferred its Consent Order from Clean Venture to Eastern Environmental, DOS, with input from the Trade Waste Commission, instead negotiated an agreement with stricter terms. Like the December 1996 Stipulation and Order, the DOS agreement with Eastern Environmental required the construction of a building to house the putrescible waste operation. Unlike that Stipulation, however, the DOS agreement prohibited the continuance of unenclosed putrescible waste handling pending the construction of the building. Only when the building was complete could Eastern Environmental process the 2,000 cubic yards of putrescible waste allowed by the Stipulation and Order. The agreement was embodied in an Enforcement Order, a copy of which is attached.

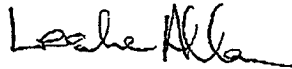
Eastern Environmental has complied with all of the terms of the Enforcement Order. It stopped processing putrescible waste out-of-doors; it has submitted all of the documents necessary to complete the environmental impact assessment process; and it expects to complete construction of the putrescible waste handling building in the next two months. If it succeeds in this last task, it may be awarded a contract to export part of the City's residential waste, as it was the low bidder on the Brooklyn-Queens Waste Export Bid Solicitation which DOS issued in September 1997.

Mr. Gavin Donahue
April 20, 1998
page -4-

DOS considers this outcome a success. Clean Venture was operating for years under authority of DEC Consent Orders, DOS compliance agreements, preliminary injunctions, and court orders, all of which allowed it to process 2,000 cubic yards per day of putrescible waste out-of-doors. In contrast, Eastern Environmental is operating under authority of a DOS Enforcement Order which eliminated the unenclosed putrescible waste operation. Rather than allowing Eastern Environmental to continue the unenclosed putrescible waste handling operation while it completes the DEC and DOS permit process and then constructs a building, DOS mandated the cessation of that operation. This result is unquestionably an improvement for the environment and community.

I hope that this summary informs and assists you. If you have any questions, please feel free to call me.

Sincerely,



Leslie Allan

cc: J. Doherty
M. Carpinello
M.B. Kris



sanitation

LESLIE ALLAN
Deputy Commissioner
Bureau of Legal Affairs
125 Worth Street, Room 710
New York, New York 10013
Telephone (212) 788-3963
Fax (212) 791-3824

SOLID WASTE TRANSFER STATION ENFORCEMENT ORDER

WHEREAS:

1. Pursuant to sections 16-130(b) and 16-131 of the Administrative Code of the City of New York (the "Administrative Code"), and Title 16 of the Rules of the City of New York, chapter 4, subchapter A (the "Rules"), the New York City Department of Sanitation (the "Department") has jurisdiction to regulate and permit putrescible and non-putrescible solid waste transfer stations, and
2. Pursuant to section 16-130(b) of the Administrative Code, it is unlawful for any person to operate a solid waste transfer station within the City of New York without first having obtained a permit from the Commissioner of the Department; and
3. Clean Venture, Inc., d/b/a New York Materials Recycling Corp. ("Clean Venture"), operates a putrescible and non-putrescible solid waste transfer station at 222 Morgan Avenue, Brooklyn, New York (the "Facility") by authority of a New York State Supreme Court Stipulation and Order signed by Clean Venture and the Department on December 2, 1996, and a Temporary Permit/Compliance Agreement dated December 23, 1996; and
4. The terms of that Stipulation and Order authorized Clean Venture to maintain at the Facility no more than 2,000 cubic yards of putrescible solid waste for a maximum of 24 hours from receipt, no more than 5,000 cubic yards of construction and demolition debris ("C&D debris") for a maximum of 48 hours from receipt, and no more than 7,500 cubic yards of recognizable uncontaminated road building material for up to 60 days; and
5. The terms of that Stipulation and Order required Clean Venture to pay permit fees of \$47,000, to enclose the putrescible waste operation at the Facility no later than July 31, 1997; and to complete the environmental impact assessment process to the Department's satisfaction no later than July 31, 1997; and
6. Clean Venture has paid the permit fees, but has not enclosed the putrescible waste operation or completed the environmental impact assessment process; and
7. Eastern Transfer of New York, Inc., a wholly owned subsidiary of Eastern Environmental Services, Inc. ("EES"), has agreed to acquire the Facility and to enclose the putrescible waste operation, to complete the environmental impact assessment process, and to redesign the Facility to mitigate its environmental impacts; and
8. EES has submitted to the Department applications for permits to operate a putrescible and a non-putrescible solid waste transfer station at the Facility; and

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DON'T LITTER

9. The Department has issued Notice of Violation No.E090735527 ("Notice") to Clean Venture for operating an unenclosed putrescible waste operation at the Facility, and EES has agreed to pay a civil penalty of no more than \$10,000 for the violation pursuant to §16-133(a)(2) of the Code; and
10. Clean Venture and EES have acknowledged service of the Notice, and have affirmatively waived their rights to notice and hearing in the manner provided by law, and have consented to the issuance of this Order, and have agreed to be bound by its terms, provisions and conditions.

NOW, THEREFORE, based upon all of the above and pursuant to the authority vested in the Commissioner of the Department by section 16-130(b) of the Administrative Code,

IT IS ORDERED THAT:

- A. Effective on the date it acquires Clean Venture, EES may continue to operate the putrescible and non-putrescible solid waste transfer station at the Facility, *provided that* EES complies with all the terms and conditions of this Order. This authority to operate is temporary pending completion of a background investigation by the Department and the New York City Trade Waste Commission (the "Commission") pursuant to sections 16-131.1 and 16-509 of the Administrative Code. This authority to operate is conditioned on full cooperation by EES in such investigation and compliance with all other terms and conditions set forth herein. If, after completion of the background investigation, the Department finds that EES is not "fit" to operate a transfer station, the Department shall revoke this Order.
- B. Upon the execution of this Order, EES shall submit to the Department a check payable to the Finance Commissioner, City of New York, in the amount of \$10,000, which is the civil penalty provided for in §16-133(a)(2) of the Code. The Department shall hold the check until EES appears before the New York City Environmental Control Board ("ECB") on the return date specified on the Notice. The Department shall deliver the check to the ECB on that date. EES then shall provide the Department with an ECB Clearance Letter verifying payment of all penalties required under this Order.
- C. Upon the execution of this Order, EES shall submit to the Department Clearance Letters from the Department and the ECB verifying that all fines, penalties, and judgments assessed against Clean Venture, EES and its affiliates, PJ's Environmental Corp., and Patsy Serra have been fully paid and satisfied.
- D. Upon the execution of this Order, EES is authorized to accept, process, and transfer putrescible solid waste at the Facility on the following terms and conditions:
 - (1) The New York State Department of Environmental Conservation ("NYSDEC") shall have granted EES written authorization for the putrescible waste operation. A copy of such written authorization shall be provided to the Department.
 - (2) All putrescible solid waste process and transfer operations shall be conducted within an enclosed structure, the plans and design of which are subject to the Department's review and approval.

- (3) Pending the completion of construction of an approved, permanent structure to house the putrescible waste operation at the Facility, EES may use the existing on-site vehicle maintenance building for the putrescible waste operation, subject to the conditions outlined in subparagraph (4) of this paragraph.
- (4) Before it may use the vehicle maintenance building for the putrescible waste operation at the Facility, EES must:
- clean floor drains and install oil-water separators
 - install odor control devices acceptable to the Department
 - install one or more ventilation fans acceptable to the Department
 - demarcate the tipping floor with yellow paint lines
 - obtain written authorization from NYSDEC to use the maintenance building for a putrescible waste operation
 - obtain from the Department of Buildings appropriate authorization, such as a Certificate of Occupancy, for use of the maintenance building as a transfer station
 - submit a restoration bond in the amount of \$120 per cubic yard of putrescible waste which the Department and the NYSDEC authorize EES to process in the maintenance building
 - submit a site plan showing the location of the maintenance building in relation to the other waste operations at the Facility
 - submit a certified engineer's blueprint of the maintenance building showing the location, capacity, manufacturer, and date of installation of the ventilation equipment
 - submit a certified engineering plan for the control of noise, vibrations, and odors from the putrescible waste operation in the maintenance building
 - submit a list of all of the deodorants that will be used, and the method of application
 - submit proof of a contract with an exterminator to monitor the putrescible waste operation for vectors.
 - submit written confirmation from a permitted putrescible solid waste transfer station that it will receive and process putrescible solid waste from the Facility, if necessary
 - submit a map, certified by a professional engineer, describing not less than one square mile of the area surrounding the transfer station clearly marking the routes where transport vehicles will be transporting solid waste into and out of the Facility, and connecting roadways permitted to be used by the transporting trucks
- (5) The amount of putrescible waste handled in the maintenance building shall be limited to the amount authorized by NYSDEC, but in no event will be more than 250 tons (or 500 cubic yards) per day.
- (6) The tipping area of the maintenance building shall be cleaned, deodorized, and free of all solid waste between 9:00 and 9:30 a.m., Monday through Friday, and between 1:30 and 2:00 p.m. on Saturday.
- (7) When EES has completed construction of the permanent structure to house the putrescible waste operation at the Facility, it may accept and process putrescible waste in an amount authorized in writing by NYSDEC, provided EES shall not store more than 2,000 cubic yards of putrescible waste at the Facility.

- (8) Before commencing the putrescible waste operation in the permanent structure, EES must submit all of the Required Documents listed in Exhibit A, as well as any and all documents or information reasonably required by the Department in connection with the application to operate a putrescible solid waste transfer station at the Facility, and the Department must approve all submissions.
- E. Upon the execution of this Order, EES is authorized to accept, process, and transfer C&D debris at the Facility in an amount authorized in writing by NYSDEC, but not to exceed 5,000 cubic yards per day, provided that EES has submitted to the Department a copy of such written authorization and has submitted a restoration bond in the amount of \$45 per cubic yard of C&D debris which the Department and NYSDEC authorize EES to store at the Facility.
- F. The Facility may operate 24 hours per day, Monday through Saturday.
- G. Within ninety (90) days after the effective date of this Order, EES shall submit to the Department all of the Required Documents listed in Exhibit B, as well as any and all documents or information reasonably required by the Department in connection with the application to operate a non-putrescible solid waste transfer station at the Facility.
- H. Within four (4) months after the effective date of this Order, EES shall submit to the Department all documentation, information, forms, and fees as are then required to complete the environmental impact assessment of the Facility which Clean Venture has begun.
- I. EES shall submit to the Department progress reports on the modification of the Facility, including plans and drawings for the modified site, on the last days of November 1997 and February and May 1998.
- J. This Order is not a permit. However, so long as EES is in substantial compliance with the terms and conditions of this Order, the Department shall not take enforcement action against it solely on the basis of its operation of a transfer station without a permit, provided that its failure to comply fully with the terms of Paragraphs A through I shall entitle the Department to take any enforcement action it deems appropriate, including but not limited to, revocation of this Order and closure of the transfer station without a hearing ten (10) business days after personal notice to EES at the address set forth in Paragraph N below, or fifteen (15) business days after notice by certified mail.
- K. This Order is issued upon the condition that the putrescible and non-putrescible solid waste operations at the Facility comply with all federal, state and local laws, rules and regulations. EES agrees that service of a Notice of Violation upon any employee at the Facility shall constitute valid service for purposes of subjecting EES to the jurisdiction of the Environmental Control Board.
- L. The Department reserves the right to require EES to take any additional measures required to protect human health and the environment, upon reasonable notice and for just cause.
- M. The Department's failure to strictly enforce any provision of this Order shall not operate as a waiver of such provision nor affect the validity of any other provision hereof.

N. All notices and correspondence pertaining to this Order shall be served personally or delivered by certified mail as follows:

a. To the Department:

Thomas Milora
Director, Permit and Inspection Unit
New York City Department of Sanitation
137 Centre Street, Room 104
New York, NY 10013

with copies (also by certified mail) to:

Leslie Allan, Esq.
Deputy Commissioner of the Bureau of Legal Affairs
New York City Department of Sanitation
125 Worth Street, Room 710
New York, NY 10013

Jody S. Hall
Administrative Staff Analyst, Bureau of Legal Affairs
New York City Department of Sanitation
125 Worth Street, Room 708
New York, NY 10013

b. To the Applicant:

Eastern Transfer of New York, Inc.
222 Morgan Avenue
Brooklyn, New York 11237

with a copy (also by certified mail) to:

Lawrence R. Schillinger, Esq.
15 Elk Street
Albany, New York 12207

O. The effective date of this Order shall be July 31, 1997. The expiration date of this Order shall be July 31, 1998.

- P. This Order may not be assigned or transferred in whole or in part without the Department's prior written agreement.
- Q. This Order contains the entire agreement of the parties and may not be changed, varied, modified, supplemented or amended except by written instrument signed by both parties

Dated: New York, New York
September 5, 1997

New York City Department of Sanitation

By: Leshe Allen
Deputy Commissioner

Consented and Agreed to by:

Eastern Transfer of New York, Inc.

By: Robert M. Kramer
Robert M. Kramer
Executive Vice President - General Counsel

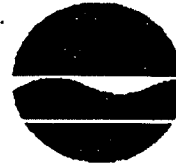
Exhibit A
REQUIRED DOCUMENTS
Modified Putrescible Waste Facility
Eastern Transfer of New York, Inc.
222 Morgan Avenue
Brooklyn, New York

1. A site plan for the modified site, completed in conformance with §4-13 of the Department's putrescible solid waste transfer station rules.
2. An engineering report for the modified putrescible waste facility, completed in conformance with §4-13 of the Department's putrescible solid waste transfer station rules. The engineering report shall specify areas in such facility for all activities relating to the receipt, tipping, sorting, processing, compaction and storage of solid waste.
3. A Certificate of Occupancy from the NYC Department of Buildings or a Certificate of Completion from the NYC Department of Business Services providing a Use Group 18 Use for the site, including the new putrescible waste facility.
4. A map, certified by a professional engineer, describing not less than one square mile of the area surrounding the putrescible waste facility, clearly marking the routes where transport vehicles will be transporting solid waste into and out of the Facility, and connecting roadways permitted to be used by the transporting trucks.
5. A restoration bond in the amount of \$120 per cubic yard of putrescible waste which the Department and the NYSDEC authorize EES to store at the putrescible waste facility.
6. A certified engineer's blueprint showing the location, capacity, manufacturer, and date of installation of the ventilation equipment.
7. A certified engineering plan for the control of noise, vibrations, and odors from the putrescible waste operation.
8. A list of all of the deodorants that will be used, and the method of application
9. Written confirmation from a permitted putrescible solid waste transfer station that it will receive and process putrescible solid waste from the facility, if necessary.
10. Proof of a contract with an exterminator to monitor the putrescible waste operation for vectors

Exhibit B
REQUIRED DOCUMENTS
Construction and Demolition Debris Facility
Eastern Transfer of New York, Inc.
222 Morgan Avenue
Brooklyn, New York

1. A site plan completed in conformance with §4-05 of the Department's non-putrescible solid waste transfer station rules.
2. A map, certified by a licensed professional engineer, describing not less than one square mile of the area surrounding the construction and demolition debris facility, clearly marking the routes where transport vehicles will be transporting solid waste into and out of the facility, and connecting roadways permitted to be used by the transporting trucks.
3. A written statement from a licensed professional engineer or registered architect certifying to the nine conditions found in the Department's non-putrescible solid waste transfer station rules.
4. A dust control plan acceptable to the Department.
5. A certified copy of the deed and title insurance for the site.
6. Proof of workers' compensation.

New York State Department of Environmental Conservation
Division of Solid and Hazardous Materials, Region 2
47-40 21st Street, Long Island City, NY 11101
Tel: (718) 482-4996 Fax: (718) 482-4979



John P. Cahill
Commissioner

CERTIFIED MAIL

February 23, 1998

Eastern Transfer of NY, Inc.
222 Morgan Avenue
Brooklyn, New York 11237

Re: Eastern Transfer of NY, Inc., 222 Morgan Ave., Brooklyn, NY

Dear Mr. D'Ambrosio,

An inspection was made at your facility (Eastern Transfer of NY, Inc., 222 Morgan Ave) on February 18, 1998 and you have been found to be in violation of your consent order to operate and the NYCRR Part 360 regulations and therefore are subject to all applicable civil, administrative and criminal sanctions set forth in ECL article 71.

The inspection of the facility revealed that construction of a putrescible waste processing building has begun without the written approval or a permit to operate and construct from the DEC. This construction is a violation of the regulations and every day the construction continues, this will be considered an additional violation.

A case will be initiated with our Division of Legal Affairs to address the above violation. If you have any questions, please contact the Division of Solid and Hazardous Materials at (718) 482-4996.

Sincerely,

Anthony Masters
Environmental Engineer 1

cc. Rich Bruzzone
Femi Falade

6 NYCRR Subpart 360-11

[For Use at Transfer Stations]

WHITE COPY	Regional Office
YELLOW COPY	Central Office
PINK COPY	Facility
GREEN COPY	Inspector

Violations of Part 360 are Subject to Applicable Civil, Administrative and Criminal Sanctions Set Forth in ECL Article 71, and as Appropriate, the Clean Water and Air Acts. Additional and/or Multiple Violations May be Described on the Attached Continuation Sheet.

☐ PART 380 PERMIT ☒ ORDER ON CONSENT ☐ REGISTERED ☐ EXEMPT ☐ COMPLAINT

25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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QUESTION

- 88

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- On Continuation Sheet identify any other violations.

Does Not Apply To A Registered Transfer Station

Anthony J. [Signature]

Inspector's Signature

Individual in Responsible Charge (Please print)

May 15, 1998



John P. Cahill
Commissioner

VIA TELECOPY (518) 465-1585

Thomas S. West, Esq.
LeBoeuf, Lamb, Green & MacRae, LLP
One Commerce Plaza, Suite 2020
99 Washington Avenue
Albany, New York 11101

Re: Eastern Transfer of New York, Inc.--222 Morgan Avenue, Brooklyn

Dear Mr. West:

I wish to formally acknowledge receipt of your letter of May 13, 1998 and to confirm our telephone discussions.

As we have already discussed, I specifically object to your distortion of our telephone discussion, and wish to confirm that I emphatically deny ever stating that "Mr. Gallay admitted that he was advised of the construction proximate to the transfer of the building."

Finally, I remind you that the 1990 Consent Order expired on May 7, 1998. As the Region informed your co-counsel, Mr. Schillinger, on May 8, reiterated on May 11 to Mr. Schillinger, Eastern's General Counsel Bob Kramer, and Senior Vice President Robert Donno, and repeated to you on May 12, the consent order will not be extended. Eastern has no basis whatsoever to believe that it is free to continue any operations now that the order has expired and Eastern concededly, has not obtained required permits. Indeed, Eastern has not submitted information to allow the Department to complete the permit application. Accordingly, any further operations violate the Environmental Conservation Law.

Very truly yours,

Laurie Silberfeld

Laurie Silberfeld
Regional Attorney

by *[Signature]*

LEBOEUF, LAMB, GREENE & MACRAE
L.L.P.

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

NEW YORK
WASHINGTON
ALBANY
BOSTON
DENVER
HARRISBURG
HARTFORD
HOUSTON
JACKSONVILLE

ONE COMMERCE PLAZA
SUITE 2020
99 WASHINGTON AVENUE
ALBANY, NY 12210-2820
(518) 465-1500
FACSIMILE: (518) 465-1585

LOS ANGELES
NEWARK
PITTSBURGH
PORTLAND, OR
SALT LAKE CITY
SAN FRANCISCO
BRUSSELS
MOSCOW
ALMATY
LONDON
(A LONDON-BASED
MULTINATIONAL PARTNERSHIP)

May 15, 1998

VIA FACSIMILE

Laurieann Silberfeld, Esq.
Regional Attorney
New York State Department of
Environmental Conservation
Division of Air Resources
Region 2
47-40 21st Street
Long Island City, New York 11101

Re: Eastern Transfer of NY, Inc. - 222 Morgan Avenue,
Brooklyn, New York 11237

Dear Laurieann:

This letter will serve to respond to your letter of today regarding the above-referenced matter.

As we discussed, my recitation of our conversation concerning Mr. Gallay's acknowledgment of the events that occurred in 1997, was my best recollection of what was said. You and I have agreed to a procedure that will obviate any misunderstandings in the future.

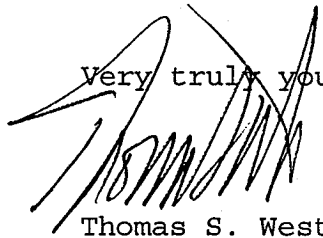
Based upon your letter of today, Eastern has no choice but to seek judicial intervention at this time. We will be seeking judicial relief in Albany County Supreme Court on Monday morning. In the meantime, we have documented to you why we believe that Eastern has continuing authority to operate under the provisions of the State Administrative Procedure Act. As such, we do not agree with your conclusion that any further operations violate the Environmental Conservation Law.

Laurieann Silberfeld
May 15, 1998
Page 2

In any event, Eastern has indicated that it will abide by whatever the Court decides on Monday regarding operations on Monday and thereafter.

Thank you for your prompt attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Tom West', written over the closing 'Very truly yours,'.

Thomas S. West

TSW:tsh

cc: Eastern Transfer of NY, Inc.
Lawrence Schillinger, Esq.

44386

CRC 7071

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT - THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY

THIS INDENTURE, made the 22ND day of DECEMBER, nineteen hundred and ninety-nine
BETWEEN EASTERN TRANSFER OF NEW YORK, INC., a Delaware corporation

party of the first part, and NEW YORK WASTE SERVICES, INC., a New York corporation,
whose address is 15880 North Greenway/Hayden Loop, Suite 100, Scottsdale,
Arizona 85260, Attention: Larry Henk

party of the second part,

WITNESSETH, that the party of the first part, in consideration of

dollars,

lawful money of the United States,

paid

by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or
successors and assigns of the party of the second part forever,

and fixtures attached thereto,
ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate,
lying and being in the Borough of Brooklyn, County of Kings, City and State of New York
and being more fully described on Exhibit "A" attached hereto and incorporated
herein.

222 Meyer Ave
Brooklyn, NY

010866

NC07517

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets roads abutting the above described premises to the center lines thereof,

TOGETHER with ^{*}the appurtenances and all the estate and rights of the party of the first part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs successors and assigns of the party of the second part forever.

* all right, title and interest, if any, of the party of the first part in and to all strips, gores, easements, rights of way and privileges, if any, belonging or inuring to the benefit of said premises, and in all appurtenances, if any, in and to said premises, including without limitation, development rights and air rights, if any.

This conveyance is made and accepted subject to the encumbrances, and other matters described on Exhibit "B" attached hereto and incorporated herein by reference, to the extent that same are valid and subsisting as of the date hereof and affect title to the above described premises (the "Permitted Encumbrances").

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been incumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

EASTERN TRANSFER OF NEW YORK, INC.

Elva Aguilar
Name: Elva Aguilar

By: Robert G. Simpson
Name: ROBERT G. SIMPSON
Title: VICE PRESIDENT & ASST. TREASURER

010868

NC07518

STATE OF NEW YORK, COUNTY OF

On the _____ day of _____ 19____, before me personally came

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

STATE OF NEW YORK, COUNTY OF

On the _____ day of _____ 19____, before me personally came _____, being by me duly sworn, did depose and say that he resides at No. _____;

that he is the of _____

the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

STATE OF TEXAS)
COUNTY OF HARRIS) SS.:

On the 22 day of DEC., 1999, before me, the undersigned, personally appeared ROBERT G. SIMPSON, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity on behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)

Shari Lee Mattern
Bargain and Sale Deed

WITH COVENANT AGAINST GRANTOR'S A

TITLE No.

EASTERN TRANSFER OF NEW YORK

SHARI LEE MATTERN

Notary Public, State of Texas

Commission Expires 02-05-01

TO

NEW YORK WASTE SERVICES, INC.

STATE OF NEW YORK, COUNTY OF

On the _____ day of _____ 19____, before me personally came

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

STATE OF NEW YORK, COUNTY OF

On the _____ day of _____ 19____, before me personally came _____, the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides at No. _____;

that he knows

to be the individual described in and who executed the foregoing instrument; that he, said subscribing witness, was present and saw execute the same; and that he, said witness, at the same time subscribed his name as witness thereto.

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on DEC. 22, 1999, by ROBERT G. SIMPSON, VP & ASST. TREAS. of Eastern Transfer of New York, Inc., a Delaware corporation, on behalf of said corporation.

Shari Lee Mattern
Notary Public in and for
the State of Texas

SECTION

BLOCK

NOT.

COUNTY OR TOWN

SHARI LEE MATTERN
Notary Public, State of Texas
Commission Expires 02-05-01

RETURN BY MAIL TO:

Zip No.

Reserve this space for use of Recording Office.

010870

NC07519

EXHIBIT A

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York being more particularly bounded and described as follows:

BEGINNING at a point on the Easterly side of Morgan Avenue distant 322 feet 6 inches Southerly from the corner formed by the intersection of the Southerly side of Grand Street with the Easterly side of Morgan Avenue;

RUNNING THENCE Easterly parallel with Grand Street and part of the distance through a party wall, 200 feet;

THENCE Northerly parallel with Morgan Avenue, 122 feet 6 inches, to a point on a line drawn parallel with Grand Street and distant 200 feet Southerly therefrom;

Thence Easterly along said line drawn parallel with Morgan Avenue, 204 feet 11-1/2 inches to the Westerly line of the land of John Groppe.

THENCE Southwesterly along said land of John Groppe, 13 feet 7-1/4 inches to a point on a line drawn parallel with Grand Street and distant 213 feet 2 inches Southerly therefrom;

THENCE Easterly along said line drawn parallel with Grand Street, 159 feet 6-1/2 inches;

THENCE Southerly parallel with Morgan Avenue, 6 feet 6-1/2 inches to the land of Martha B. Hull;

THENCE Northeasterly along the land of Martha B. Hull, 83 feet 1 inch;

THENCE Southeasterly along the land of Martha B. Hull; 252 feet 5-1/2 inches to the United States Pierhead & Bulkhead Line;

THENCE Southwesterly along the United States Pierhead and Bulkhead Line, 17 feet 8 inches to the United States Pierhead and Bulkhead Line at a point on a line drawn parallel with Grand Street and distant 250 feet Southerly therefrom;

THENCE Westerly along the United States Pierhead & Bulkhead Line and along said line drawn parallel with Grand Street, 349 feet 10-3/4 inches to the United States Pierhead and Bulkhead Line at a point on a line drawn parallel with Morgan Avenue and distant 489 feet Easterly therefrom;

--CONTINUED--

010872

LEGAL DESCRIPTION -- CONTINUED

THENCE Southerly along the United States Pierhead and Bulkhead Line and along said line drawn parallel with Morgan Avenue, 322 feet 6 inches to a point on a line drawn parallel with Grand Street and distant 582 feet 6 inches Southerly therefrom;

THENCE Westerly along said line drawn parallel with Grand Street, 489 feet to the Easterly side of Morgan Avenue;

THENCE Northerly along the Easterly side of Morgan Avenue 260 feet to the point or place of BEGINNING.

LEGAL DESCRIPTION -- CONTINUED.

010874

EXHIBIT B

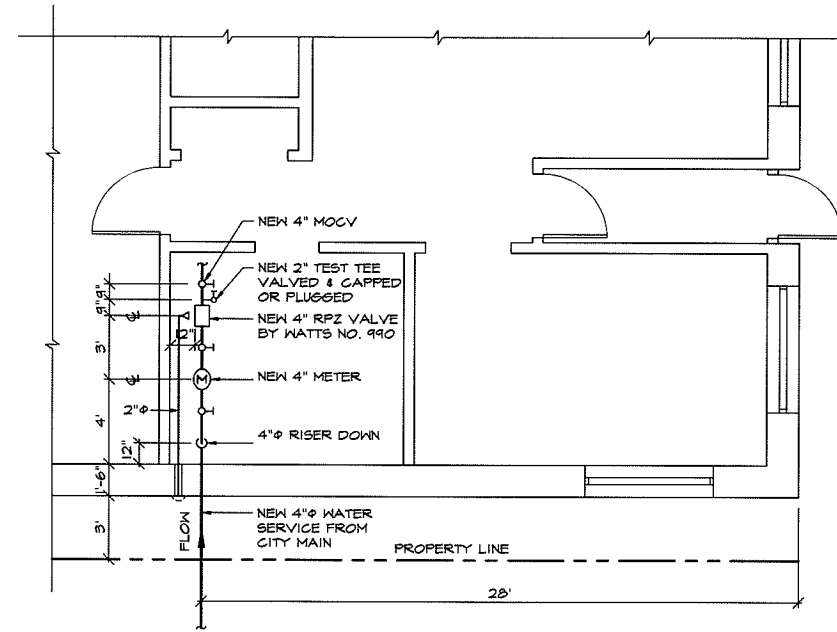
1.
 - a) Party wall status of the northerly wall of the 1 story brick and concrete block building fronting on Morgan Avenue, and rights and obligations appurtenant to such status.
 - b) Effects of fence encroachments upon property adjoining the premises on the north. No title warranty is made as to any land (including without limitation property fenced in but not described in Exhibit A) which is not described in Exhibit A.
 - c) Any absence of, defects in, or encumbrances upon title to the portion of the premises north of northerly fence, and being triangular in shape, being approximately 48.75 feet by 105.00 feet by 135.00 feet with its most northerly vertex lying approximately 37.25 feet north of the fence line.
 - d) Any absence of, defects in, or encumbrances upon title to any portions of the premises lying south or east of the southerly fence line, and north of the United States Pierhead and Bulkhead Line (including without limitation effects of encroachments of portions of the premises on English Kills).
 - e) Effects of fence variances with record lines.

As shown on a survey made by Merlyn J. Jenkins and Associates Inc. dated 6/3/99 last revised 7/27/99.
2. Railroad Consent recorded in Liber 19 Cp. 7 Section 10.
3. Easement between Michael Tuch and Brooklyn Union Gas Company dated 7/7/42 recorded 7/16/42 in Liber 6208 Cp. 54.
4. Any absence of, defects in, or encumbrances upon title to any land lying below the high water line of Newtown Creek as same now exists or formerly existed.
5. Any absence of, defects in, or encumbrances upon title to any land lying outshore of the actual line of solid fill.
6. Rights of the United States Government to enter upon and take possession, without compensation to the owner, of lands now or formerly lying below the high water mark of Newtown Creek.
7. Rights of the People of the State of New York or City of New York in those portions of premises now or formerly under the waters of Newtown Creek.

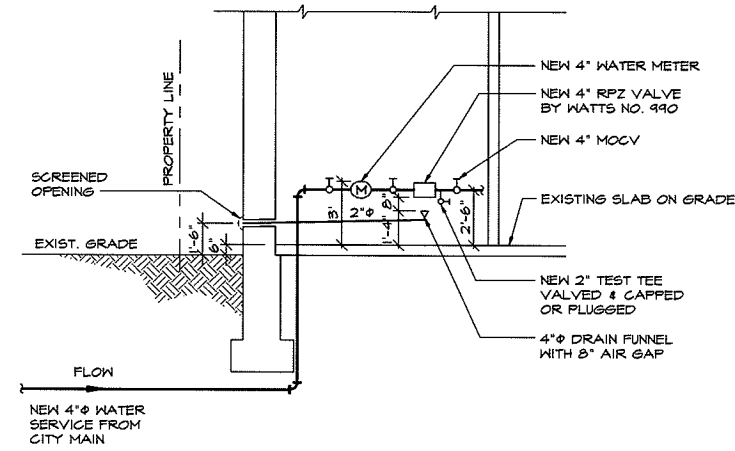
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010876

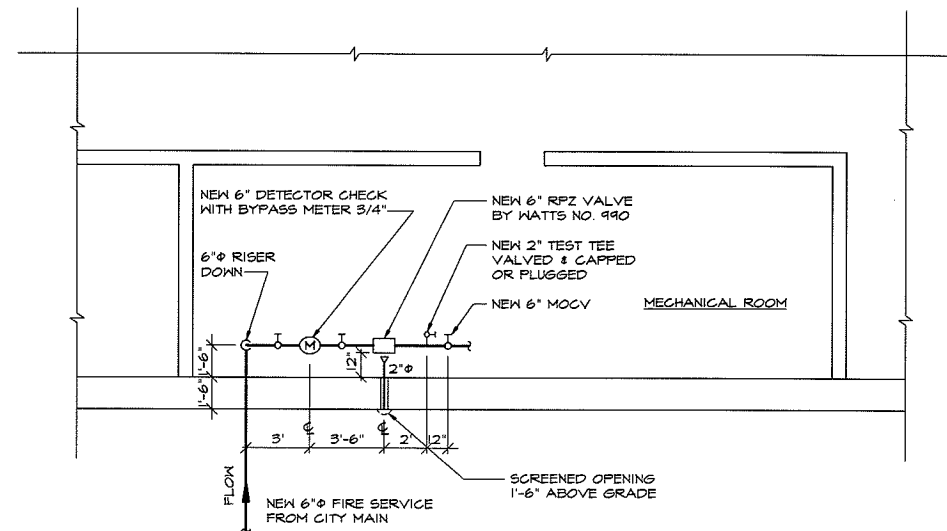
8. Rights of the United States Government to establish harbor, bulkhead or pierhead lines or to change or alter any such existing lines and to remove or compel the removal of fill and improvements thereon (including buildings or other structures) from land now or formerly lying below the high water mark of Newtown Creek, without compensation to the owner of the premises.
9. Rights of the United States Government, the State of New York and the City of New York, or any of their departments or agencies to regulate and control the use of the piers, bulkheads, land under water and land adjacent thereto.
10. Water charges since the date of the last reading, including but not limited to subsequent adjustments to minimum, average, and estimated water and sewer reading amounts.
11. Building setback lines as shown on survey made by Merlyn J. Jenkins and Associates, Inc. dated June 3, 1999, last revised July 27, 1999..
12. Effects of applicable flood zone designations.
13. Taxes and assessments for 2000 and subsequent years.



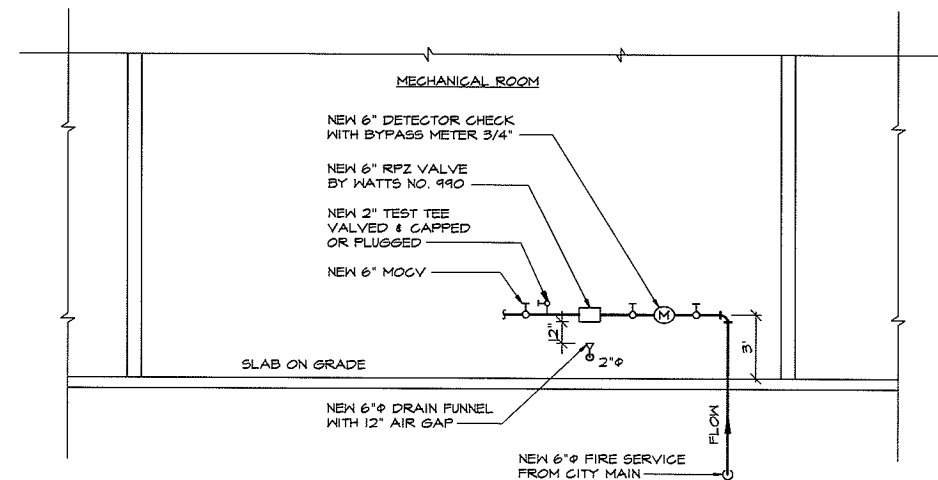
PARTIAL FLOOR PLAN - EXISTING BUILDING
 SCALE: 1/4"=1'-0"



PARTIAL CROSS SECTION - EXISTING BUILDING
 SCALE: 1/4"=1'-0"



PARTIAL FLOOR PLAN - PROPOSED BUILDING
 SCALE: 1/4"=1'-0"



PARTIAL CROSS SECTION - PROPOSED BUILDING
 SCALE: 1/4"=1'-0"


NOTES:

1. FROM THE POINT OF ENTRY TO THE B.F.P., PIPES MUST BE RUN EXPOSED AND BE READILY ACCESSIBLE FOR INSPECTION.
 2. BETWEEN POINT OF ENTRY AND B.F.P., THE PIPES MUST BE STENCILED "FEED TO BACKFLOW PREVENTER. DO NOT TAP OR CONNECT TO THIS LINE" AT 5'-0" INTERVALS, AND AT ALL WALL AND FLOOR PENETRATIONS.
- (A) ALL LETTERING SHALL BE 1" HIGH OF BLACK LETTERING ON WHITE BACKGROUND.

UNAUTHORIZED ALTERATION OF, OR ADDITION TO, PLANS OR DOCUMENTS BEARING THE SEAL OF A LICENSED PROFESSIONAL ENGINEER IS A VIOLATION OF SECTION 7209, SUBDIVISION 2 OF THE NEW YORK STATE EDUCATION LAW.

ANY ALTERATION TO THIS DOCUMENT MUST BE DONE BY A PERSON ACTING UNDER THE DIRECT SUPERVISION OF A LICENSED PROFESSIONAL IN ACCORDANCE WITH THE STATE EDUCATION LAW.

COPIES OF THIS DOCUMENT NOT MARKED WITH AN ORIGINAL OF THE PROFESSIONAL ENGINEERS INKED SEAL OR HIS EMBOSSED SEAL SHALL NOT BE CONSIDERED TO BE VALID TRUE COPIES.

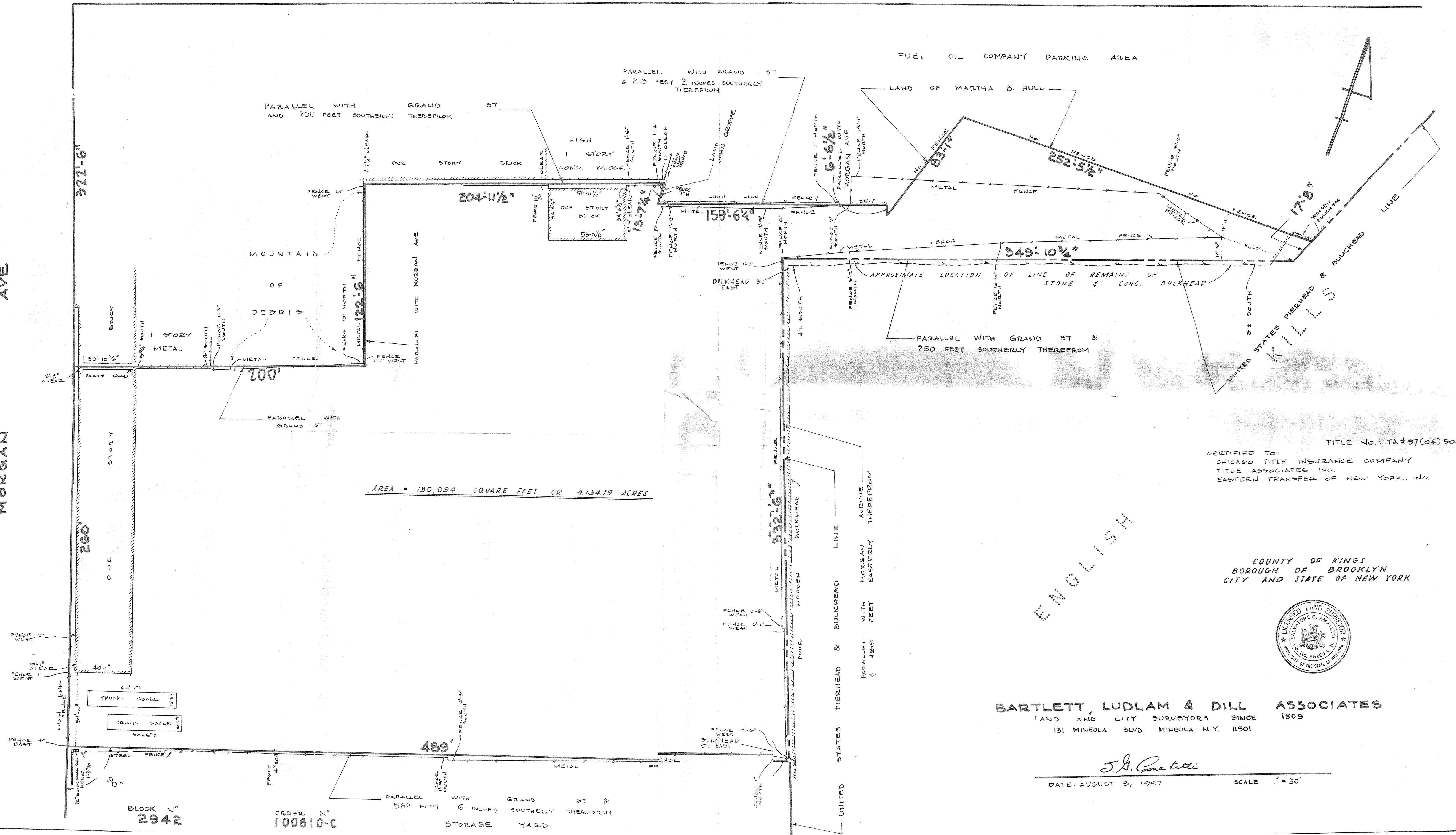
REV.	DATE	DESCRIPTION	BY
JOB NO.		EASTERN ENVIRONMENTAL SERVICES, INC. 222 MORGAN AVE., BROOKLYN, N.Y. 11237	
DRAWN	AXC		
CHECKED	JMS	PARTIAL FLOOR PLANS	
APPROVED	RDG		
SEAL		 Galli engineering, p.c. 734 Walt Whitman Road, Suite 402A Melville, New York 11747	
DATE	12-29-97	SCALE	1/4"=1'-0"
		DRAWING NO.	2

GRAND

ST

AVE

MORGAN



AREA = 180,094 SQUARE FEET OR 4.13439 ACRES

TITLE No.: TA#97(04)500
 CERTIFIED TO:
 CHICAGO TITLE INSURANCE COMPANY
 TITLE ASSOCIATES INC.
 EASTERN TRANSFER OF NEW YORK, INC.

COUNTY OF KINGS
 BOROUGH OF BROOKLYN
 CITY AND STATE OF NEW YORK



BARTLETT, LUDLAM & DILL ASSOCIATES
 LAND AND CITY SURVEYORS SINCE 1809
 131 MINEOLA BLVD, MINEOLA, N.Y. 11501

J. G. Conatti

DATE: AUGUST 8, 1997

SCALE 1" = 30'